(9)

No. 91-615

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1991

ALLIED-SIGNAL INC.,
as successor-in-interest to
The Bendix Corporation,
Petitioner,

v.

DIRECTOR, DIVISION OF TAXATION
Respondent.

**On Writ of Certiorari to the
Supreme Court of New Jersey**

JOINT APPENDIX

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**PETITION FOR CERTIORARI FILED OCTOBER 11, 1991
CERTIORARI GRANTED NOVEMBER 27, 1991**

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The following opinions have been omitted in printing this joint appendix because they appear on the following pages in the appendix to the printed Petition for Certiorari:

CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

August 31, 1984	Complaint (Corporation Business Tax) filed in the Tax Court of New Jersey.
October 22, 1984	Answer on Behalf of Defendant Director, Division of Taxation filed.
January 21, 1988	Proceedings before the Honorable Lawrence L. Lasser, Presiding Judge, Tax Court of New Jersey.
June 30, 1988	Opinion filed by Honorable Lawrence L. Lasser, Presiding Judge, Tax Court of New Jersey, directing Clerk of the Tax Court to enter judgment [text printed in Appendix C to Petition (the "Petition") for a Writ of Certiorari at 45a].
July 27, 1988	Judgment Affirming 1981 Deficiency Tax Assessment of the Director, Division of Taxation filed.
August 25, 1988	Notice of Appeal to Superior Court of New Jersey, Appellate Division filed.

October 19, 1989	Opinion and Judgment of the Superior Court of New Jersey, Appellate Division filed [text printed in Appendix B to the Petition at 25a].
November 8, 1989	Notice of Appeal to the Supreme Court of New Jersey filed.
July 16, 1991	Opinion and Judgment of the Supreme Court of New Jersey filed [text printed in Appendix A to the Petition at 1a].

Tax Court of New Jersey

Docket No. ______________

BENDIX CORPORATION
Plaintiff,
vs.

DIRECTOR, DIVISION OF TAXATION
Defendant.

Complaint
(Corporation Business Tax)

Plaintiff Bendix Corporation ("Bendix"), a corporation organized under the laws of the State of Delaware and having its principal office and commercial domicile at Bendix Center, Southfield, Michigan, seeking a reduction in the tax assessment made by the Director of Division of Taxation in a Final Determination dated June 4, 1984, a copy of which is attached hereto as Exhibit A ("Final Determination"), and also seeking a refund of taxes pursuant to a claim for a refund, which claim was also denied in the Final Determination says:

1. A. Bendix was unconstitutionally and improperly assessed additional Corporation Business Tax in the amount of $41,707.44 for the tax year ending September 30, 1980 ("Fiscal 1980"), together with interest of $7,507.34 (thru January 15, 1982) and penalty of $2,085.37.

B. Bendix was unconstitutionally and improperly denied a refund of $107,143.56 for Fiscal 1980.

C. Bendix was granted a refund of Corporation Business Tax of $495,656.39 for the tax year ending September 30, 1981 ("Fiscal 1981"), but was unconstitutionally and improperly denied an additional refund in the amount of $1,907,794.70.

2. The facts upon which Bendix relies in support of its position that the above assessment and denial of refunds were unconstitutional and improper are as follows:

A. During Fiscal 1980 and Fiscal 1981, Bendix had its principal office and commercial domicile in Southfield, Michigan.

B. On July 15, 1981, Bendix filed its New Jersey Corporation Business Tax Return for Fiscal 1980 (together with an approved New Jersey extension) showing a refund due of $127,942.00. On July 15, 1982, Bendix filed its New Jersey Corporation Business Tax Return for Fiscal 1981 (together with an approved New Jersey extension) showing a refund due of $2,403,451.00.

C. Subsequent to Bendix's filing of the Fiscal 1980 and Fiscal 1981 tax returns, Bendix was audited by the Division of Taxation. As a result of the audit, an initial Notice of Assessment dated November 1, 1983 was issued for the tax years Fiscal 1980 and Fiscal 1981 (the "Initial Notice"). A copy of the Initial Notice is attached hereto as Exhibit B. As a result of the audit, Bendix was assessed additional tax due of $41,707.44 for Fiscal 1980 together with interest (through January 15, 1982) of $7,507.34 and penalty of $2,085.37. Further, Bendix's claimed refund of $2,403,451 for Fiscal 1981 was reduced to $475,687.40, for a net refund due of $424,387.25 for the two taxable years combined.

D. The Initial Notice contains the following computation for the Net Income Tax Liability of Bendix in Fiscal 1980:

Adjusted Entire Net Income (Sch.A, item 36)	$41,206,469.00
Adjustments: Schedule A, item 35	4,889,360.00
Adjusted Entire Net Income—Revised	$46,095,829.00
Allocation Factor	8.504779%
Allocated Net Income	3,920,348.38
Net Income Tax Rate	8.625%
Net Income Tax Liability—Fiscal 1980	338,130.05

The "Adjusted Entire Net Income—Revised" includes a capital gain of $20,292,251 on the sale of Bendix's 100% stock interest in Skagit Corporation ("Skagit"). In preparing its tax return for Fiscal 1980, Bendix had also included the Skagit capital gain as the return was prepared and filed prior to significant decisions of the United States Supreme Court which hold that inclusion of such capital gains income would be unconstitutional because Bendix and Skagit did not constitute a unitary business. Based on the same Allocation Factor and Net Income Tax Rate, $148,851 of the Net Income Tax Liability for Fiscal 1980 is attributable to this capital gain.

E. The Initial Notice contains the following computation for the Net Income Tax Liability of Bendix in Fiscal 1981:

Adjusted Entire Net Income (Sch.A, item 36)	\$56,835,028.00
Adjustments:	
Schedule A, item 35	267,351,914.00
Adjusted Entire Net Income—Revised	\$324,186,942.00
Allocation Factor	7.980727%
Allocated Net Income	25,872,474.81
Net Income Tax Rate	9.0%
Net Income Tax Liability	2,328,522.73

F. The \$267,351,914.00 added to Adjusted Entire Net Income in the Initial Notice consists of the following items:

1. Net Gain/(Loss) from the Sale of Stock and Securities:

Securities Account—Lehman Brothers	(320,703)
Sale of Asarco, Inc. stock	211,513,354
Adj. on 1980 Sale of Skagit Corp. stock	(554,514)
Adj. on 1980 Sale of BHS stock	(97,978)
Sale of United Geophysical Corp. stock	41,953,170
Sale of Bass and Company stock	(5,041,153)
Sale of Farnham Metallurgy, Inc. stock	(3,500,000)
	\$243,952,176

2. Interest Income:

From Foreign Subsidiaries

Fram Europe Limited	1,421,985	
Jurid Werke G.m.b.H.	445,088	
Industrias Bendix Sociedad Anonima Industrial, CyF	786,003	
Dexbin Limited	1,542,458	
Bendix Limited	1,734,613	
Other	443,125	
		6,373,272

From Domestic Subsidiaries:

Texas Pipe Bending Company	1,093,945	
Bendix Forest Product Corp.	895,170	
United Geophysical Corp.	296,051	
Bass and Company	441,851	
Other	367,229	
		3,094,246

From Securities Account— Lehman Brothers	12,702,331

From Other Sources:

The Commodore Corporation Note (Sale of Bendix Home Systems, Inc.)	540,353	
Cabby A.B. Note (Sale of Digne S.A. and Bendix Caravanes (France) S.A.)	143,306	
Prospect Hill Resources, Inc. (Sale of Bass and Company)	451,000	
Other	95,230	
		1,229,889
		23,399,738
TOTAL		$267,351,914

G. The interest income Bendix earned in the Lehman Brothers Securities Account during Fiscal 1981 was primarily earned upon the proceeds from its sale of its stock of Asarco Inc. ("Asarco"), Skagit and United Geophysical Corp. ("UGC"). Interest income "From Other Sources" was received on the sale of stock of Bendix subsidiaries.

H. The "Adjusted Entire Net Income" includes $3,515,136 of dividend income attributable to Bendix's stock holdings of Asarco and holdings of preferred stock of The Commodore Corporation ("Commodore"), which amount reflects the 50% statutory exclusion of the total dividends attributable to such holdings. In preparing its tax return for Fiscal 1981, Bendix had included the Asarco and Commodore dividends in Net Income as the return was prepared prior to and filed within days after significant decisions of the United States Supreme Court which hold that

inclusion of such dividends would be unconstitutional because Bendix, Asarco and Commodore did not constitute a unitary business.

I. The sum of the amounts of the gain on the sale of Bendix's 20.6% stock interest in Asarco, the gain on the sale of Bendix's 100% stock interest in UGC, all interest income (except that which is labelled "Bass and Company", "Prospect Hall Resources, Inc." and "Other") and the dividends received by Bendix on its Asarco and Commodore stock is $278,582,963. Based on the Allocation Factor and Net Income Tax Rate in the Initial Notice, $2,000,965 of Net Income Tax Liability for Fiscal 1981 is attributable to these items.

J. Subsequent to Bendix's receipt of the Initial Notice, Bendix requested a conference by letter dated November 29, 1984. A copy of the letter is attached hereto as Exhibit C. A conference was held with Division of Taxation ("Division") personnel on April 27, 1984. Thereafter, upon review of written submissions by Bendix and Bendix's formal request for an adjustment pursuant to N.J.S.A. 54:10A-8, the Final Determination was issued by the Division. The assessment for Fiscal 1980 was unchanged in the Final Determination, while the amount of refund granted for Fiscal 1981 was increased to $495,656.39, for a net refund due of $444,356.24 for the two taxable years combined.

3. The said assessment and denial of refunds is incorrect for the following reasons:

A. The inclusion of the capital gain on the sale of the Skagit stock of $20,292,251 in Fiscal 1980 in Net Income together with the offsetting adjustment of $554,514 thereto in Fiscal 1981 is prohibited by the Due

Process Clause of the Fourteenth Amendment of the United States Constitution because Bendix and Skagit did not constitute a unitary business.

B. The inclusion of the capital gain on the sale of the Asarco stock of $211,513,354 in Fiscal 1981 in Net Income is prohibited by the Due Process Clause of the Fourteenth Amendment of the United States Constitution because Bendix and Asarco did not constitute a unitary business.

C. The inclusion of the capital gain on the sale of UGC stock in Fiscal 1981 in Net Income is prohibited by the Due Process Clause of the Fourteenth Amendment of the United States Constitution because Bendix and UGC did not constitute a unitary business.

D. The inclusion of interest income from foreign and domestic subsidiaries (except that which is labelled "Bass and Company" or "Other") in Fiscal 1981 in Net Income is prohibited by the Due Process Clause of the Fourteenth Amendment of the United States Constitution because Bendix and such foreign and domestic subsidiaries did not constitute a unitary business.

E. The inclusion of interest income from the Lehman Brothers Securities Account in Fiscal 1981 in Net Income is prohibited by the Due Process Clause of the Fourteenth Amendment of the United States Constitution to the extent the interest was earned from the proceeds from the sale by Bendix of the stock of Skagit, Asarco and UGC because Bendix, Skagit, Asarco and UGC did not constitute a unitary business.

F. The inclusion of interest income set forth above as "From Other Sources" (except that which is labelled "Other") in Fiscal 1981 in Net Income is prohibited by the Due Process Clause of the Fourteenth Amendment of the United States Constitution because such income was earned from proceeds of the sale by Bendix of stock of certain Bendix subsidiaries and Bendix and such subsidiaries did not constitute a unitary business.

G. The inclusion of the $3,515,136 dividend income from Bendix's Asarco and Commodore stock holdings in Fiscal in 1981 [sic] Net Income is prohibited by the Due Process Clause of the Fourteenth Amendment of the United States Constitution because Bendix, Asarco and Commodore did not constitute a unitary business.

H. In the alternative that this Court determines that any of the gains, interest income or dividends set forth in paragraphs 3A, 3B, 3C, 3D, 3E, 3F or 3G are properly includable in Net Income of Bendix, the net income is not fairly apportioned and thereby in violation of the equitable standards of apportionment established by N.J.S.A. 54:10A-8 and of the requirements of the Commerce Clause of the United Stated [sic] Constitution because the allocation factor does not reflect the receipts, payroll or property of Skagit, Asarco, UGC, Commodore or any other foreign or domestic subsidiaries of Bendix.

I. In the alternative that any of the gains, interest income or dividends set forth in paragraphs 3A, 3B, 3C, 3D, 3E, 3F or 3G are deemed properly includable in the Net Income of Bendix, the Director, Division of Taxation abused his discretion

pursuant to N.J.S.A. §54:10A-8 by denying Bendix's request to adjust the allocation factor to reflect the receipts, payroll and property of Skagit, Asarco, UGC, Commodore and the other foreign and domestic subsidiaries of Bendix.

4. The amount in controversy and the amount of refund claimed exclusive of penalty and interest each exceeds $2,000 for each of the tax years.

WHEREFORE, Bendix demands that (i) the assessment, penalty and interest be set aside for Fiscal 1980, (ii) a refund of $107,143.56 be granted for Fiscal 1980, (iii) a refund of $2,000,965 be granted for Fiscal 1981, and (iv) such other alternative or additional relief be granted as this Court deems just and appropriate, including without limitation if necessary, the adjustment of the allocation factors to include the receipts, payroll and property of Skagit, Asarco, UGC, Commodore and the other foreign and domestic subsidiaries of Bendix, and the recalculation of the tax for Fiscal 1980 and Fiscal 1981 based upon such adjusted allocation factors.

RIKER, DANZIG,
SCHERER & HYLAND
Attorneys for Plaintiff
Bendix Corp.

By /s/ Alvin Weiss
ALVIN WEISS
A Member of the Firm

Dated: August 30, 1984

(Proof of service omitted in printing)
(Exhibits to Complaint omitted in printing)

(Letterhead of Riker, Danzig, Scherer & Hyland omitted in printing)

February 15, 1985

Mary R. Hamill
Deputy Attorney General
Richard J. Hughes Justice Complex
CN 112
Trenton, New Jersey 08625

Re: Bendix Corporation vs. Director

Dear Polly:

Confirming our recent telephone conversation, Bendix has determined that it will abandon certain issues raised in the complaint filed on their behalf. Specifically, Bendix will no longer contest the inclusion of capital gains in their 1980 entire net income resulting from the sale by Bendix of its interest in Skagit Corporation, nor will it contest the inclusion in Bendix's entire net income of certain dividend and interest income. The specific issues and contentions which are being abandoned by Bendix are contained in paragraph 3A, 3D, 3E (but only as that paragraph pertains to Skagit), 3F and 3G of the complaint. All remaining aspects of the action will continue as set forth in the complaint. Bendix will respond to the Director's interrogatories consistent with its decision to abandon certain of the issues as described herein.

Very truly yours,

/s/ Mark S. Rattner
Mark S. Rattner

MSR:rk
bc: Edward R. Koch, Esq.

Tax Court of New Jersey

Docket No. 14-24-0504-84-CB

Civil Action

(Caption omitted in printing)

DEPOSITION OF WILLIAM AGEE, a witness called on behalf of the Defendant taken pursuant to the applicable provisions of the New Jersey Rules of Civil Procedure, taken before Mary E. Phillips, Registered Professional Reporter and Notary Public in and for the Commonwealth of Massachusetts, at the Dunfey Hyannis Hotel, West End Circle, Hyannis, Massachusetts, on Thursday, August 21, 1986, commencing at 9:15 a.m.

APPEAREANCES [sic]:

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* * *

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MS. HAMILL: I'd like to say a number of things on the record before we get started.

This is the deposition of William M. Agee. Mr. Agee is a nonparty witness in this matter since he is not employed by Bendix.

The deposition is taking place in Massachusetts because Mr. Agee is not subject to the jurisdiction of the New Jersey courts.

The parties have stipulated that the deposition transcripts will be admissible if offered into evidence without objection as to authenticity or as to the availability of the witness.

If there are objections we will state the objections for the record and reserve the resolution of any of the objections to the time of trial or argument.

We will mark the exhibits for identification and authenticate them if necessary. And they will be either stipulated by the parties or offered at the time of argument or trial if they are objected to.

And we will continue the numbering of the exhibits from the prior depositions. And the first exhibit that I would like to have marked for identification is the stipulation of the parties

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allowing this deposition. This should be marked D-16.

MR. RATTNER: I have no problem with that procedure. I simply note that your narrative about what was in the stipulation conforms to the stipulation and

obviously that stipulation sets forth what we agree to I think in your narrative.

MS. HAMILL: It does.

(Stipulation marked as Exhibit No. D-16 for id.)

* * *

WILLIAM AGEE

having first been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION
BY MS. HAMILL:

Q. Can you state your full name for the record?

A. William M. Agee.

***

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[MS. HAMILL:] Now, you say you became Chief Executive Officer in December of 1976.

And at that time what was the change in your responsibilities from being part of the office of

[p.10]
Chief Executive and having the responsibilities you have just outlined?

A. At the time the announcement of the Chief Operating Officer's assignment and becoming President of the company was made the office of the Chief Executive was no longer in existence.

All the operating units, the automotive group, the forest products group, the industrial group, and the automotive group, all of those operations began reporting directly to me.

And the financial functions that had previously reported to me became the responsibility of the Chairman.

But that period was short-lived because the Chairman was soon appointed by Mr. Carter, President Carter, in early December to become the Secretary of the Treasury.

Q. Early December of what year was that?

A. 1976. And I became Chairman and Chief Executive designated in December of '76. It became official in January of '77 when Mr. Bloomenthal was sworn in as the Secretary of Treasury.

And as a practical matter I operated as the Chief Executive of the company from early December of

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1976 until I left the company on June 1, 1973—1983, sorry.

Q. 1983 you say?

A. Yeah, June 1.

Q. And then as—

A. Just for the record eleven years and six days.

Q. As Chief Executive Officer then once Mr. Bloomenthal was appointed and left for Washington I take it the financial units reported to you as well as the operating?

A. Yes, they did.

Q. So you had complete management responsibility for the company; is that correct?

A. Yes, ma'am.

* * *

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[MS. HAMILL:] What were the views he communicated on strategies for growth that were appropriate for Bendix in his view when he was Chairman?

A. I think in order not to take up the entire day because the best way to describe it is that it's in all the annual reports that were put out in 1972 through 1976, various communications with shareholders and analyst meetings and so on.

And there is a plethora of those summarizing what was Mr. Bloomenthal's view as it related to how Bendix was going to be run and what was his basic philosophy.

And if I could succinctly but probably not do it justice it was to have balance diversification of the company.

It was to increase shareholder value. Be sensitive to people as well as profits. And to continue to have a thriving enterprise.

Q. Did Bendix make any major acquisitions while Mr. Bloomenthal was serving as Chairman?

And by major I mean—well, in excess of $20 million.

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MR. RATTNER: You are talking from 1972 forward now?

MS. HAMILL: I am talking now through specifically the time that—yes.

Q. The time that you were present at Bendix through the time that Mr. Bloomenthal left the company?

A. If you defined major as over 50 million the answer to that was one.

If the answer is major of 20 million and more there is probably three or four.

Q. Could you just list them?

A. The largest one that was made under Mr. Bloomenthal and successfully completed was the purchase of Bendix of what became Bendix Home System.

And I think that purchase price was in the area of 70 or 80 million dollars, if I remember correctly.

MR. RATTNER: I'd like to preface this—and I am sure there will be other questions on this along these lines—with our objection to the relevance of the inquiry as to the acquisition and dispositions of Bendix throughout these years.

We don't feel that those questions or facts really bear any relevance to the issues in the case.

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Rather than clog the record with objections to every question, because I am sure there will be many, I would like to note it as a continuing objection to relevance.

And Mr. Agee can answer to the extent the questions are limited and well-defined, you know, but I noted that before and I would just note it again.

MS. HAMILL: And I will note for the record our response which we will obviously argue later on is that we are looking at a company that in Mr. Agee's words just now one of the goals was balance diversification, maximization or increase in shareholder value and that these actions may well have been part of that strategy.

And we are looking at the strategy of Bendix and how the ASARCO investment and UGC investment fit into that strategy.

Q. What were the other acquisitions? Now, we are talking over 20 million — between 20 million and 50

million between the time Mr. Bloomenthal was Chairman—

A. I believe that one was the AUTOLITE acquisition of the AUTOLITE plant and supply contract from the Ford Motor Company was over $20 million.

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And the other acquisition that comes to mind, and I don't believe I have forgotten any, was the purchase of 40 percent of Jurid, that's J-u-r-i-d, which was a plant in Hamburg, Germany that Bendix owned sixty percent of and we acquired the other part.

Now the precise purchase price of that I can't recall but that acquisition took place about '75. I don't believe there are any other acquisitions of consequence during his tenure as Chairman.

Q. When Bendix acquired what became Bendix Home Systems did Bendix have—what business, if any, of Bendix—what existing business at that time did Bendix Home Systems fit in with?

A. The closest related business at the time was American Forest Products which later became known as Bendix Forest Products.

Q. Right. Who was Chairman of Bendix prior to Mr. Bloomenthal?

A. A. P. Fontaine.

Q. And if you can remember from approximately when to what date was he Chairman?

A. He was Chairman from the spring I believe of 1965

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until April of 1972.

Q. Did you have any contacts with Mr. A. P. Fontaine?

A. I did.

Q. And were those official contacts in the sense of your employment at Bendix?

A. The first time I met Mr. Fontaine was five minutes after I was elected Executive Vice President, Chief Financial Officer and Director.

Mr. Fontaine had retired one month before as Chairman of the company in CEO, but he remained on the Board for several years as Chairman of the Finance Committee.

So it was in the capacity as Chairman of the Finance Committee, former Chairman of the company and a fellow Director that I had contact with him.

Q. And would it be correct to say that as Chief Financial Officer you were the top management person on the management of the Board?

A. Mr. Bloomenthal was also on the committee so he might take exception to that characterization, but I was one of them, yes.

Q. Did Mr. Fontaine have occasion as being a member of the Finance Committee and a Director to discuss with you Bendix' strategies for growth and acquisition

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while he was Chairman?

MR. RATTNER: You mean Bendix' strategies for acquisition and growth that were occurring at that time or just his own philosophy on what they might have been?

MS. HAMILL: I mean his philosophy when he was serving as Chairman of Bendix.

A. Yes.

Q. And what were those strategies that he communicated to you?

A. Well, again, I would preface it by saying that if you study the annual reports of the company from 1965 through 1972 it would pretty much reflect much better than I how he was perceiving and how he was managing the company.

Several things that do come to mind in addition to those that have already been stated is that when Mr. Fontaine became the Chairman of the company in '65 the company was heavily dependent upon aerospace products and government contracts.

As I recall something over 50 percent of our profits were government related.

And one of his principal objectives during the 60's was to allow the company or to grow the

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company or to develop the company in such a way so that they would be less dependent upon government sponsored business.

And the stated goal that was said internally and I think from time to time externally is that he had a personal goal of trying to get the profits on and dependence upon government contracts from where it was in '65 down to in the area of no more than 20 percent of the company, because he felt it was not wise to be solely dependent on in effect one classification of a customer.

Now, obviously, he had similar kinds of objections in terms of people and profits and shareholder growth and so on which many managements do.

But the overriding objective that he had that would perhaps differentiate himself a bit from what I have described Mr. Bloomenthal is this dedication to become less reliant upon the government.

* * *

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[MS. HAMILL:] Let's be a little more specific than that. For instance, was there a committee system?

Did you work through committees and how did that work?

A. The Board of Directors had ultimate responsibility for all major decisions of the company.

And without getting into each and every area there was a chart of executive approvals which spelled out matters of compensation—at that time expenditures, matters of research and development, matters of budgets and so on on which the Board had the ultimate approval.

For example, I believe every capital expenditure that was over a million or million and a half maybe two million it changed over time of any nature and the company had to go to the Board for final approval for any acquisition of consequence.

And consequence would be a few thousand dollars. And as a practical matter I don't think we had any acquisition at all that did not go to the Board of Directors for final approval.

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The same would be true of a divestiture. So major matters—and I'd like to keep in that context—there was not a major matter of consequence that the Board of Directors did not ultimately approve.

As it related to the chain of command, if you will, and the decision-making process before that took place there was no capital expenditure that I am aware of over a hundred or $150,000 that was made while he was Chief Executive that I didn't either know about it and/or have to make a final approval of it even if it didn't go to the Board.

So let's say between a hundred thousand on up to a million or two and a half million, depending on the

type of capital expenditures, none that I am aware of were made without my approval.

There is not an acquisition that was made during my tenure of office that was not approved by me whether it was very small or very large.

And the same would be true of major personnel decisions, major research and development programs, all operating budgets and all strategic plans.

Now, as it related to below my level as Chairman, the person who ran the automotive group as

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an example had a level to start of capital expenditures would be my level, if you will, and between his people—and again I don't remember if it was between 25,000 and 50,000 up to a hundred or 200,000 but in that area—that the automotive group person would approve and would go through. The same would be true of research and development, personnel changes and so on.

On acquisitions again, obviously, he who ran the automotive group or aerospace or industrial area or forest product would be involved in a review with their people, he would sign off on it before reviewing it with me and the corporate staff people.

The thing I am trying to say here without making it too long and involved is that capital expenditures of consequence, acquisition, divestitures, major changes in the makeup, major R and D programs and so on would basically be approved by me and in most cases the Board and in all cases, of course, whoever was responsible below that level.

And there were periodic reviews of budgets, periodic reviews of strategic plans, periodic operating reviews during the year.

And it depended on what we were talking

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about.

Not a month would go by that we wouldn't be reviewing some, if not all, aspects of various operating groups or the company in totality.

* * *

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[MS. HAMILL:] When you say Chief Administrative Officer, was that the Controller's function?

A. No. That was Charlie Donnelly at the time who had the legal personnel and labor relations. Charles F. Donnelly, a lawyer.

Q. No comment. I want to just phrase this next question in a certain way, and I have to back up a little bit.

As I think you know, we are talking here about whether the state of New Jersey can tax capital gains from the sale of Bendix' stock interest in ASARCO, capital gains from the sale of UGC, and interest income realized in a Lehman Brothers account in the proceeds from those sales.

And broadly labeling just for the sake of this next line of questions these transactions that gave rise to these gains and interest as investments and the transactions and the company that gave rise to the daily operating income as operations just for purposes of this line of questioning, was there any—

MR. RATTNER: Let me just preface that. We

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—obviously this is your question and you can characterize it as you wish, it obviously doesn't make it so. I think with that let's hear the question.

Q. Let's hear the question borne out. While you were Chairman, was there any difference in the decision-making process that was used to arrive at a decision recording investments such as ASARCO or UGC or Lehman Brothers and decisions made in the operating area; that is, for the operating sectors of the company; such as, automotive aerospace?

MR. RATTNER: I'm not sure I understand what you are saying.

MS. HAMILL: I'm looking at decision-making.

MR. RATTNER: And he also described how acquisitions were part of a decision-making process which ultimately came through his office. You know, so you ask him how was the decision to—

MS. HAMILL: I am seeing if there was any difference. Maybe he will say yes, maybe he will say no. But I think the question follows up.

MR. RATTNER: The question is so broad and open ended I'm not sure—

MS. HAMILL: I don't think it is broad and

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open ended.

MR. RATTNER: Why was Lehman Brothers thrown into that?

MS. HAMILL: Because it is part of the issue in the case.

MR. RATTNER: Why don't you narrow the question?

MS. HAMILL: I can't narrow the question. Let's see if he can answer it or if he can't answer it.

Let's see if he knows what I am getting it at. Sometimes these witnesses know better what I am getting at than you do, Mr. Rattner.

MR. RATTNER: They are smarter than I am.

A. You have several categories in there in terms of the ASARCO situation.

To the best of my knowledge in the time I was with Bendix all during the time I was with Bendix until the ASARCO investment took place there had not been a decision like ASARCO.

ASARCO was different in my mind. And it was a major transaction.

It was the largest transaction that had been made during—again, this '72 to '78 period at that

[p.36]
stage.

It was a nonoperating situation because it was an investment in a company that had specific limitations attached to it.

In terms of how that decision was arrived at it was different because I was the architect of the idea, and I had some staff people help me with the idea.

But there was no natural resource group other than forest products. And of course, they didn't know the mining business.

And so the way that decision originated was with me with some staff help in analyzing that area, and it was approved by the Board.

But it is different in the sense that nothing had been decided like that during my tenure.

Maybe Vincent Bendix had something about that in his time or something and Earnie Breach but during my time it was case.

In the case of United Geophysical, I wasn't there when that company was acquired, but in terms of how the decision was made to divest of it that decision was similar to the way we made other divestment alternatives and decisions.

[p.37]

Again some of the operating people were involved, but it was mainly a corporate decision that was made and—

Q. Excuse me. A made corporate decision, do you mean Planning Department or CEO?

A. No me, CEO. Trying to differentiate again between operations and corporate decisions.

As an example, somebody who wanted to acquire a little company in the aerospace or automotive would say here we have a plan. This is going to fit in and so on.

UGC at the time it was sold was part of the aerospace group, but they didn't make nor were they advocating that we sell that particular operating group. That decision was made by me.

And I didn't involve the operating group until the decision had been run through the Board that, yes, we were going to sell it.

And so if you take those two as an example, those were corporate decisions principally made by me with some corporate staff support. And obviously they were agreed to and ratified and approved by the Board.

Q. When you say the decisions were made by you and that

[p.38]

is basically the decision to buy ASARCO and a decision to sell UGC, was there any input into your decision from the Bendix Planning Department?

A. Oh, sure, yes. As it related to ASARCO, Jerry Jacobson and his people.

But mainly Jerry had done some analysis for me on the nonferrous minerals business.

And as a matter of fact done a couple of studies for all the companies in that industry, and we narrowed it down to two, Kennecott and ASARCO.

And we bought positions in both before we ultimately did what we did.

Q. And how about the decision to divest UGC? Was there any involvement of the Planning Department in that decision that you recall?

A. And I have to say planning and financial department.

Q. Yes.

A. Both were involved because we didn't decide until the very last moment whether we would.

At one time we had serious consideration whether we would take this company public and remain a part owner in the company.

And so there was extensive work by the legal department as well as the finance department and the

[p.39]
Planning Department in the means of divestiture there.

Q. How about the decision to sell ASARCO. Was that your decision?

A. Absolutely.

Q. And again, did the Planning Department have a role or the finance—

A. No. No role in that. And the reason for that just a quick history is from the time we acquired the ASARCO position until the time we sold it it was on everybody's mind who knew anything about Bendix.

What are they going to do next? Are they going to acquire more? Are they going to keep it? Or are they going to sell it?

And if I said it once I said it 500 times when asked the question, What were you going to do with is a ASARCO? From the day we bought it until the day we sold it I had at least every day I would get a question on that.

And my answer was always the same. We have three alternatives as it relates to ASARCO. Buy more, sell it or hold it.

And I can assure you we are going to do one of those things. And that was the answer from the

[p.40]
beginning until the very end and it remained that way. It was different.

Q. Did you every consider the possibility of buying more in ASARCO?

A. I did and I tried to.

Q. Can you describe that a little, if you will?

A. I had extensive conversations with the Chairman and ultimately made a brief presentation to the Board of ASARCO.

And I believe it was either August or September of 1979 in which I proposed that we merge the two companies. And I was nicely but firmly and luckily turned down.

Q. And that was in what part of '79 did you say?

A. August, September of '79. I think it was early September. Maybe it was late September of '79, but I had conversations with Mr. Barber in August of '79.

And the Board—I can't recall if it was at the August or the September Board meeting.

I think it was probably September. And now that I recall I think their Board meeting was the last Tuesday or Wednesday of the month so that would make it late September.

Q. And I take it that the idea to acquire more stock in

[p.41]
ASARCO was something that you brought to the Bendix Board before making a proposal?

A. I did. I took it. It was approved by the Bendix Board. I'd have been in trouble a lot sooner if I hadn't—but I brought it to the Bendix Board in June of 1979 at a meeting, Board meeting in Paris. And it was approved by them to allow me to proceed with negotiations.

Q. At what point did you decide to sell Bendix' interest in ASARCO?

A. Well, the decision to sell was made in September 1980. I had contemplated it obviously during the entire time because there were really only as I said three options.

But the decision to sell I made that in September. And it was around the middle part, the latter part of September.

And I remember it well because we had agreed to sell the forest products group to Kohlberg, Kravis and Roberts.

We made that agreement in August of '80. And we announced it September of '80. And I knew that the world would want to know.

Well, now that you are getting out of forest

[p.42]
product what does that mean about ASARCO?

Because it was another natural resource albeit a different kind of investment. So I spelled it out at the time that we would consider selling the ASARCO position and

that was done in the mid-part of September. I think it was the 20 something of September.

Q. Was there any connection between the decision to sell ASARCO and the refusal of the ASARCO Board to be bought up, to have any more of its stock bought up by Bendix?

MR. RATTNER: I'm sorry, could you read that one back?

Q. Was there a connection in your mind betwee~~n the~~ rebuff, if you will, by the ASARCO Board and the decision to sell?

In other words, one of the three possibilities was no longer open to you. Did that color your view as to continuing to hold the investment?

A. Well, you never say never, okay. So I think it is hard to say that the acquisition of ASARCO was forever gone even though they said no once.

So in my mind that was a matter—they said

[p.43]
"no," but did it mean they couldn't say yes at a later date? You know, who knows for sure?

There had been a lot of time and a lot of distance between those matters. And in my mind I didn't think that because we were rebuffed now we are going to sell, no.

Q. Yeah, okay.

Q. Now Mr. Fee testified at his deposition that there was the thought I think he said—

A. Who is Mr. Fee?

Q. William Fee I think was in the controller's office.

A. Oh.

MR. RATTNER: I'm not sure Mr. Agee is familiar with Mr. Fee personally.

Why don't you ask him the substance rather than relating it to Mr. Fee's testimony.

MS. HAMILL: Mr. Fee made a statement and I wondered what Mr. Agee's view was on this. We were talking about the fact that Bendix I believe intended to take UGC public at one point and own as you say a share in the company, but it would be a public company.

And Mr. Fee said something to the effect that UGC could be made to stand alone and that was

[p.44]
part of Bendix' thinking.

Can you tell me what Bendix did to make UGC stand alone in connection with this possible public sale?

A. Okay. Just again for the record so there is no misunderstanding of the facts, it was one of the alternatives the company considered and that is to take it public.

But at no time did we ever make the decision that that's what the company was going to do for sure.

That was one of the alternatives that we were faced with.

UGC was a subsidiary, a separate subsidiary. It had operated separately for a period of time.

In the last five, six, seven years it had been part of the aerospace group. But it did not rely heavily upon the aerospace staff, although there was involvement.

It didn't rely heavily on the corporate staff, although there was some involvement.

It was closer to being a stand alone business than, let's say, an operating division of Bendix whether it be in aerospace, automotive or

[p.45]
industrial.

Because it was a subsidiary it had previously operated separately and it was relatively autonomous, because it was quite a different business than most of the central business of aerospace.

In order to make sure that—if we were to take this public there were certain things we had to do to in effect to make sure the management could stand on its own.

We brought in a stronger financial person as I recall and brought in an additional person or two or we were prepared to which would in effect allow that

company to—we are going to have to get a Board of Directors.

We had some conversations with people, so an independent Board of Directors would have to be there. And that's obviously a necessity for a public company.

So some of those steps were beginning to be taken and preparing the company for the possible public side.

Q. Now, I think you mentioned at one point these I think you said five-year strategic plans that were done by Bendix?

[p.46]

A. They were referred to as straps.

Q. And I'd like to get into the role that the strategic plans played in the decision-making process in just a little more detail. At what levels were they prepared?

A. From the smallest operating unit up. Take a small division of the aerospace group. They would prepare their own strategic plan.

It would be reviewed by the aerospace management, aerospace group.

And that would be made part of the aerospace group's plan.

And then they in turn—"they" being the aerospace group division and units would present it to the corporation.

And that would then be reviewed by corporate management and made part of the corporate strategic plan.

And this was true of all our major operating units of the company.

Q. When you say they were reviewed by corporate management, what specific functions within corporate management are you talking about now?

A. The plans. The personal review Chairman's Council or

[p.47]
whoever was reviewing it would be made by the Planning Department and would review, critique, summarize those plans.

And they would in turn present it to me and the group that was going to review it.

And then we would physically have a meeting of between one day and three days where we would interact with the operating people whosoever plan we were reviewing.

Q. Can you tell me in a general way what you expected to see in those strategic plans, what the contents were in a very general way, and I am looking at things like did they include strategies for growth for instance?

A. Oh sure. One of their requirements would be, you know, tell us as you can how well and what it takes to grow your businesses without any additional

capital, with more capital, with a lot more capital, with less capital.

And acquisitions would be presented in those, because some of the divisions would come in and say, We must acquire something in order to remain competitive.

Or if the corporation is going to say grow

[p.48]
at 10 or 15 percent over the next five years we can't do it given our existing base or we can do it but we need more money.

So it was the full spectrum. Grow as fast as you can with what you have, with what you would like to have.

Q. As a group would say we can only do it by an acquisition or words to that effect, would they name a particular acquisition candidate that they had in mind?

A. In some cases they would, yes.

Q. Then how were the plans used, acted on?

A. Well, it basically became when we would have these reviews, we would go back and forth.

Sometimes right in the midst of these meetings we would say we are with you go ahead and go in the following areas. You can count on this.

Or we would say we'd like to think about that. We will get back to you.

Or it is fine, go ahead and we will be monitoring it. Good luck and God bless.

Q. If it was an acquisition that was recommended?

A. If it was an acquisition that was recommended in some instances we would say sounds good.

[p.49]

Here's three candidates, go flush them out. When you have one that seems to make sense come back and talk to us.

Or alternately we'd say, Fine. If you are going to work on that find so and so from the Planning Department or so and so from the Finance or Planning Department and go and work with them and keep us tuned.

In other cases, We are not so sure about that. Don't spend any time on that.

Q. When you say "we" are you talking about you particularly or the Chairman's Council?

A. Mainly me, but I mean everybody was there and they were part of it.

In some cases I'd turn to Bill Purple if he was running the aerospace group. Hey, Bill, you run with this one. This is fine or whatever. The "we" meant the corporation.

* * *

[p.52]

[MS. HAMILL:] Now, I'd like to turn to Skagit for a minute. When was that acquired if you know?

A. It was in the late 60's maybe 1970, in that timeframe, while Mr. Fontaine was still Chairman.

He tried to acquire Hyster and they said no.

Q. What did Hyster make?

A. Lift trucks.

Q. Skagit made winches?

A. They had made logs and skidders and things that had hydraulic lifts attached to them. We always used to tease him a little bit that Skagit was Hyster on the rebound.

Q. What did you mean by that?

A. Well, again, you never know for sure. And the world it is full of second guessers.

But Skagit was not the most brilliant investment the company ever made. Any Hyster was a brilliant investment.

And there was disappointment that the company didn't get Hyster.

Q. Did Mr. Fontaine ever in responding to that say why he had bought Skagit, why Bendix had bought Skagit?

[p.53]

A. I think you can't zero in on Skagit. You have to understand during the period of the 60's and early 70's there was Skagit; United Geophysical; there was Scheffield a machine tool company in the Midwest in Ohio; there was Burr Machine Tool; there was American Forest Products and several other companies which were acquired which were all part of Mr. Fontaine's program to develop a new dimension and achieve the objective we talked about a bit earlier and this was one of several.

Q. All right. Now, turning briefly to Bendix Forest Product. I believe that was acquired in 1970; is that your recollection?

A. '69, '70. Part of it started in '69. It was completed in '70.

Q. And it was known at that time as American Forest Products Company?

A. Yes, it was.

Q. And I take it Mr. Fontaine was Chairman at that time?

A. Yes, he was.

Q. And what was the business that Bendix got when it bought American Forest Products?

A. Trees, a lot of wonderful trees in the Sierras, some building materials distribution facilities, some

[p.54]
sawmills, plywood mill, two waste paper paper mills, three container plants, and the largest maker of lettuce, wooden lettuce boxes in California and an ownership position in a company that made wooden ladders called Larson Ladders and an ownership in modern materials which had aluminum siding for houses.

Q. When you say an ownership position are you saying a minority stockholding?

A. No. They owned most of it.

Q. I see. Okay. When Bendix acquired American Forest Products and it acquired those businesses you just listed, were those related to Bendix' existing businesses at the time? And again I am referring now to your knowledge through Mr. Fontaine specifically?

A. Well, I read all the papers. And I read what was said to the shareholders.

And the only relationship of consequence that the company felt at the time and talked about at the time—because Bendix was quite good in infrared technology.

We could understand how you could survey forests with greater degree of accuracy and because we had some laser technology we were going to apply

[p.55]
that to the sawmill so that we would make sawmills more automated and more efficient, because there is a lot of waste in sawmills.

And those were the two areas that "there was some kind of synergy."

But I think Mr. Fontaine would be the first if not the second person to say that it was basically an unrelated diversification with the exception of these two areas of potential synergy.

Q. Now, turning to the ASARCO acquisition. That acquisition took place—

A. The investment.

Q. The investment, yes, took pace in basically 1978; is that correct?

A. Absolutely.

Q. And ASARCO's business was generally nonferrous metals; is that correct?

A. Generally.

Q. Did Bendix' business at the time relate in any particular way to nonferrous metals?

A. No.

MS. HAMILL: I'd like to have an exhibit marked now. This is a memorandum dated March 31, 1978 with three attachments.

[p.56]

It is addressed to the members of the Long Range Planning Committee from W.M. Agee.

And could we have that marked. And that would be D-17.

MR. RATTNER: Could we just make sure we have all the pages to that and make sure we have all the attachments.

MS. HAMILL: Yes.

(Discussion off the record.)

MS. HAMILL: We have been off the record, and we realize that the attachments that we have on the exhibit that we are identifying may not be all the attachment that exist.

And we are going to go back and verify that. And the exhibit is intended to be the March 31, 1978 memo and all the attachments. And with that could we have that marked.

(Documents marked as Exhibit No. D-17 for id.)

Q. Mr. Agee, I show you what's been marked D-17 for identification. Do you recognize that?

A. It appears to be something that I put my name to, yes, ma'am.

Q. And it is a memorandum, is it not, to the Long Range

[p.57]
Planning Committee?

A. Of the Board.

Q. Of the Board. Do you want to take a minute or two to look it over?

A. If you would like me to.

Q. Just for you to be sure what it is.

A. Okay. I have thumbed it quickly.

Q. Does this memorandum set out your thinking on the reasons for buying an interest in ASARCO?

A. I am sure it does, yes.

Q. Was there anyone else who had any input into this memo other than yourself?

A. Oh, sure. Mr. Jacobson.

Q. And who was Mr. Jacobson?

A. He was Senior Vice President. I think he was Senior Vice President at that time and head of the planning area. And he was the principal author of this with my editing.

Q. And these studies that are attached to it just very briefly and what we have here, B-1, B-2; would those be things that Mr. Jacobson had gathered from various sources?

A. Yes.

Q. As authority for what he was saying in the memo?

[p.58]

A. Yes.

Q. Now, you said I think that the memo was addressed to the committee of the Board of Directors called the Long Range Planning Committee; is that correct?

A. Yes, ma'am.

Q. And you were a member of that committee, I take it, as management representative?

A. I think I was. I attended all the meetings if I wasn't a member.

Q. Now, the introduction to that memorandum on page one states 44 goals, if you will, I think for the 80's aimed at growth and diversification?

A. Yes, ma'am.

Q. Could you just take a look at those and would those reflect the company's—really sum up the company's goals for growth and diversification at that time; is that a correct picture?

A. At that time I am sure it reflects our thinking, yes. As a matter of fact we did all those. About three really don't fit when you look at it.

That's a rationale for the investment. One, two and four really represent what our current thinking was.

And three—I should have caught this with

[p.59]
Mr. Jacobson. Shame on me. That three doesn't really fit.

Q. So what you are saying is that you had these three goals but aside from those goals you wanted to invest in a basic resource.

Is that the gist of what you just said?

A. No.

Q. Why do you say this wasn't part of it?

A. The it was this was the part of the reason for investing here.

Just very quickly the rationale at that time as far as I was concerned was that the company's basic operations were well-funded in terms of R and D, were well-funded in terms of capital expenditures were concerned, and were meeting the objectives that they stated and what we thought was realistically attainable and again fitting within the overall philosophy of the company.

And the rationale for this particular investment at that time was that the company in my judgment was in a position that it had some excess capital available to it.

Our debt ratio was not as high as we felt was tolerable. And our current operations were being

[p.60]
funded well.

And we were looking for additional ways in which we could strengthen shareholder value and strengthen financially the company.

And the ASARCO investment fit very nicely into that rationale, because it was depressed which is the third point here.

That whole industry was and ASARCO in particular. And it was an opportunity to make an investment which would position us to either grow into it as we tried later unsuccessfully or in the meantime we could make a very good return for the shareholders.

Q. Now, you indicated I think that one reason then for making this kind of investment in ASARCO as stated in the statement, basic resources were depressed and you go on, I think they offer strong profit possibilities for the 80's. What went into that statement? What was your thinking on the strong possibilities?

MR. RATTNER: I think the memorandum goes on for 20 pages. And I am sure it sets out in detail why Mr. Agee and Mr. Jacobson may have felt that way. If you want him to paraphrase that memo that really

[p.61]

doesn't serve any purpose.

Q. If anything stands out in your mind.

A. I am sure it adequately covers it we felt it was a good area of good opportunity.

Q. I see you refer to Blackie?

A. Blackie was the code name for ASARCO. Do you want—

Q. No. We don't have to get into that.

A. Lot of nostalgia attached to it.

Q. Now, going on I think there is also expressed in the memorandum the idea that you would acquire 20 percent of ASARCO as opposed to a larger interest. Can you talk at all about why you fixed on 20 percent?

A. We had many discussions in terms of is it five, 20, 50 percent, a hundred percent.

And the decision we arrived at was that 20 percent was a substantial position but it wasn't a total commitment to the industry and to the company but it was significant enough to make a difference in terms of long term appreciation.

And, if you will, it was a compromise between the full spectrum of alternatives that we considered.

* * *

[p.65]

[MS. HAMILL:] Now, we have reviewed very briefly the acquisitions of interests in UGC, Skagit, Bendix and Forest

[p.66]

Products and ASARCO.

Did the ASARCO investment in light of those other investments represent the only time Bendix branched out into new areas in your view?

MR. RATTNER: Let's get a timeframe.

MS. HAMILL: I have put it in terms of going back to '65 and we have gone through—

MR. RATTNER: He can answer differently as to different timeframes and branching out—I'm not sure. Let's define that a little bit better.

MS. HAMILL: I think if Mr. Agee understands the question maybe he can answer it. And if he doesn't I will try to explain it more.

A. Well, I will try to repeat what I have already stated. To the best of my knowledge in the period of time from 1972 until March, April of 1978 there was no other investment or no other dimension of the company like ASARCO. That was unusual, in and unto itself from '77 until mid '78 timeframe.

Q. Now going back and starting with 1956 when UGC was acquired the 1956 to 1972 period?

A. To the best of my knowledge there was no investment similar in terms of a 20 percent with a limitation and all other things attached to ASARCO— there

[p.67]
was no investment like this even bordering on this in the '65 to '72 area.

Q. From the point of view now not so much of the structuring of the investment taking a minority position but from the point of view of Bendix going into new lines of business, was this ASARCO investment unique going back to 1965?

A. The only area that would be possibly slightly analogous would be the investment and ultimate acquisition of forest products.

The forest product I think as I recall that one correctly that the company was a two-stage merger transaction.

It was part cash and then there was some preferred stock as I remember.

And there was a time delay of several months.

But again forest products was an acquisition of a hundred percent of the company. And it was intended to be an operating unit of the company as opposed to a passive investment.

Q. From the point of view of branching out from Bendix' existing businesses at the time was there any kind of a—

[p.68]

A. That's what I said that's where the analogy possibly holds.

Bendix wasn't in the forest product business, wasn't in the natural resource broadly or narrowly defined, wasn't in the paper business broadly or narrowly defined. So that was a new dimension.

Q. But you're distinguishing—now you are saying you are not putting UGC or Skagit in that position. You find that there was a closer relation between UGC's business and Bendix' businesses?

A. I think there is really three parts to the answer of that.

First of all from an ownership side if you look at it from that point of view Skagit, United Geophysical and forest product were similar because it was a hundred percent acquisition.

All right. UGC and forest products were kept as separate subsidiaries.

Maybe Skagit was. I can't recall. Whether they were kept as a separate.

But they were a hundred percent owned and they were in the main operated on a separate autonomous synergy.

[p.69]

In terms of did we have a business like them previous to the acquisition of UGC, Skagit and forest products the answer is no, which would be again we didn't have anything like ASARCO previous to its acquisition except again natural resources broadly defined forest products.

But in no case and the reason why I tried to distinguish ASARCO—this was a situation where it was a passive.

We sat on their Board, but we basically didn't have any control. And we were limited in terms of what we could do in terms of acquiring more.

And we also had some restrictions in terms of what we could do in terms of unwinding our position.

We had to give them a 30-day notice. And they had the right to match whatever we could sell it to somebody else for. So that's where it was in and unto itself, different.

Q. Now, I'd like to focus a little on the dispositions of those four companies, ASARCO, UGC, Skagit, BFPC. I think I am right that BFPC were sold in 1980?

A. Yes.

Q. And we know from this case that UGC and Bendix'

[p.70]
interest in ASARCO were sold in 1981?

A. Yes, ma'am. But the ASARCO agreement was reached in 1980. It was actually, the culmination of the sale—the transfer of money didn't take place until '81.

From my point of view the deal was consummated in '80 and UGC was the only one consummated in '81.

Q. Okay.

A. Penzoil and Texaco notwithstanding.

Q. Now, I think we have—you did discuss the generation of the idea to sell UGC and to sell the stock in ASARCO, and am I correct in saying that it was basically your idea to get out of those companies?

A. Yes, ma'am.

Q. With some input perhaps from the Planning Department; is that correct?

A. Yes.

Q. When it came to the decision to sell BFPC, how was that decision reached?

A. Carefully and quietly. In the spring of 1980 we started some conversations with the ultimate purchaser of the property.

And it was really in the summer of '80 that

[p.71]
I decided that the price and the time was right.

And we reached that decision and took it to the Board and got their approval.

But it was without input from the staff of the company.

Q. No input at all? No Planning Department input?

A. Not from the Planning Department or the Controller's area.

Q. What made you think it was the time to sell Bendix Forest Products?

A. Forest products business for some period of time in my judgment we either had to get quite a bit bigger or we had to remove ourself from the business because we were kind of in between.

We were not fully integrated. And we were a regional forest product company. And we had tried on various occasions to make it bigger during the late 70's.

And in each case every acquisition seemed to be to me very expensive.

So logic dictates if everything out there is very expensive and you are not prepared to pay the price for it to get bigger and if you feel you have to get bigger or you are going to shrink, I guess

[p.72]
only one conclusion comes out of it if you think through this way, and that is you probably should divest.

It was not a mainline business for Bendix. And frankly the time was right and inflation fever was at an all time pitch, peak, fever pitch.

And the price we got was a price that I couldn't refuse.

Q. When you say the inflation fever was at an all time pitch, did that tie in, in your thinking, with what the price of the natural resources that BFPC—what might happen to pricing?

A. Absolutely. Because when you are talking to other companies—we talked to several other companies, quite a few other companies who were regional companies, similar to ourselves.

And when they were talking about values that I felt were inflated by a 50 to a hundred percent that tells you something about the overall market.

And as you recall in 1980 inflation psychology in this country was running rampant.

Interest rates were very, very high and people felt commodities resources were the only hedge against inflation.

[p.73]

And we happened to own a lot of trees. And they were very valuable.

And people put a tremendous premium on those because they were extrapolating on the future from my point of view.

And the price we did ultimately get was the highest price to my knowledge that's ever been paid for trees of this quality in the world. We got an all time price.

Q. But when you were thinking about inflation and the price and your decision to sell, was it your thought that the price was not going to hold up for these commodities or that these people were perhaps—

A. I had an economics professor who had a simplistic phrase. That phrase was what goes up must come down.

And when everone [sic] thought the trees were going up I am enough of a contrarian to believe that life is not one extrapolation from here onward, and these things don't progress geometrically.

And one is the company was on a strategy and had been since the time I became President to grow and develop and do things that I was discussing.

And this would be a part of a natural reconstructing which I had been planning for a year

[p.74]
or two before.

So the time was right. And it fit in with our time to restructure.

Q. Was there enough of a drive up between trees and nonferrous metal that ASARCO was involved in—

MR. RATTNER: Are you asking if it was the same market between trees and nonferrous metals?

A. Some yes and some no. What I mean by that is commodity resources, natural resources in general were inflating during this period of time.

Trees rise in values, part of which was attached to the inflation psychology that existed and pervaded the entire economy.

But there were some separate forces within the copper business and the nonferrous metals business that was further accelerating and that is the demand/supply

relationship was very close to being imbalanced which is the difference in copper, through. True in any business.

The supply/demand in forest products wasn't as great. There was a bigger gap in copper.

Q. Was your concern or your thought that the market would come down in natural resources such as trees?

Did you have the same concern for nonferrous

[p.75]
metals and specifically the copper that ASARCO dealt in, was that one of the relations that motivated your decision to sell ASARCO is what I am really driving at.

A. Any decision that's this important is complex and it is difficult to reduce it to a couple or three reasons.

But as it relates to—once we made the decision to sell forest products, and we had a deal that was struck and we were satisfied with that price it was therefore natural that it would only accelerate peoples' interest in what are you going to do with ASARCO because there is now no other natural resource dimension.

Secondly, we were on the path of restructuring the company. And ASARCO had appreciated substantially and so that entered into it.

And thirdly some of the forces that were at play market-wise as far as copper prices and other nonferrous metals were concerned I did have a concern about their long-term trendline.

What they would do in the near term I didn't know. You never do. But as far as long-term

[p.76]
trendline I did have a concern about that.

So I think it was the convergence of several kinds of interlocking and interrelated decisions that caused us to consider that.

Q. Now, you mentioned a couple of times here a restructuring of the company that was going on. And just to tie it into something that we have had before in these depositions let's have this marked.

No. I'm sorry, this is not to be marked. This is an exhibit which was marked earlier. It is D-6 which is a letter on the stationery of Lehman Brothers Kuhn Lab [sic]. I show you D-6, Mr. Agee.

A. (Indicating.)

Q. Do you recognize that letter, Mr. Agee?

A. Yes, ma'am.

Q. Just briefly could you say what it is?

A. It is a letter from Pete Peterson who was the Chairman of Lehman Brothers addressed to me September 5, 1980 which spells out our fee arrangement on various transactions.

Q. Why did he discuss a fee with you?

A. Well, you don't want a long sermon on this.

Q. I just want to know the relationship between Lehman and Bendix.

[p.77]

A. Investment bankers in order to make a significant living they charge outrageous fees for their work.

And since we were going to do and were in the process of doing several transactions of which there was good reason to do it through one firm rather than several and to try and protect the shareholders of Bendix or we didn't pay them high fees, I had a long involved discussion with Mr. Peterson about what we would pay them for the work that they were to do.

And just parenthetically as I look at those percentages and compare it to some of the stuff that's out there today I wish Chief Executive Officers would be as cost conscious as some people in the past.

Q. The bottom of the page the first page it refers to an exciting restructuring job that you have embarked upon. Can you describe what that restructuring was?

A. I don't know what Mr. Peterson meant by "exciting," but I can talk to you about what restructuring meant.

We had made the decision, as I said earlier, we were discussing it in '79 and early '80.

And we made the decision that certain businesses would be sold and that we would emphasize

[p.78]

more high technology companies than we had in the past and that we would take some of those areas that were not in the mainstream of other business, nor did we think we could economically make them into the mainstream and we would sell those off.

And it also came under the major umbrellas. One of the areas I was trying to accomplish was to make the company less dependent profit-wise on the automobile business.

MR. RATTNER: I'd like to note for the record on the bottom on D-6 there is a line underlined. I assume those are your markings.

MS. HAMILL: I think I must have put them there.

THE WITNESS: Can I go off the record for a minute.

(Discussion off the record.)

Q. Now, Mr. Agee, you referred to selling off I think was the term you used the businesses which were not mainstreamed businesses in Bendix?

A. Or we could make into mainstream economically.

Q. Give us some examples of the non-mainstream businesses that you wanted to sell off?

A. Texas Pipe Bending, United Geophysical, Skagit,

[p.79]
Bendix Forest Products, ASARCO, these were all areas we considered and certain areas of the automotive group.

Q. Now, your interest in becoming less dependent on the automotive business, had that been a concern of your pedecessors [sic], the Chairmen that preceded you at Bendix?

A. No, not to the degree it was to me because as I have already testified that between 1965 and really 1976 the company went from being basically government dependent to being automotive dependent.

And so one of the things that I didn't spend a lot of time publicly talking about but the Board certainly knew my concern is I felt the company was too dependent upon the automobile.

And one of the things I hoped to accomplish while I was CEO was to make it less dependent upon the automobile or automobile, truck, automotive broadly defined.

Q. And then another thing I think you said was part of the restructuring you had in mind was a greater emphasis on high technology.

Did you have any particular areas that you were looking at?

[p.80]

A. Yes.

Q. What were those?

A. All of those that we later worked on that are a matter of public record.

Q. Martin Marietta?

A. RCA, Lockheed, General Dynamics, Gould, you don't need to have the whole list but that was.

Q. Yes. Am I correct that you took some stock positions in those companies that you just listed, Lockheed, General Dynamics, Martin Marietta and Gould?

MR. RATTNER: If I could note for the record that those situations for the most part occurred at a timeframe after the disposition of ASARCO and UGC.

And we have had this discussion before. We feel that there is really no relevance to go into events which occurred on those dates.

And with that as a background note my objection to it and continuing objection. And you set forth your position.

MS. HAMILL: I would state our response that we are looking at the way Bendix operated and its acquisition strategies.

And the final step in all of that was the attempt to acquire Marietta.

[p.81]

Therefore, even though it is after the year at issue it does have relevance and Judge Lasser has permitted questions—

MR. RATTNER: He has permitted—with documentation and whatnot.

A. And the answer to the question is yes.

Q. Let's go back to the question. The question that you are answering is that you took stock positions.

Did you take stock positions; is that what you are answering?

A. The answer to the question is still yes.

Q. Fine. Just while we are on the subject of Lehman Brothers and to finish up on that topic, as I understand it the proceeds from the sale of the stock in UGC and Bendix' 20 percent stock interest in ASARCO were put in an account at Lehman Brothers.

Does that correspond to your recollection, Mr. Agee?

A. Not exactly, no.

Q. Could you explain why?

A. Well, we had substantial funds that were coming in during that period of time at various times.

Some of the funds came directly into the Treasury at Bendix and were used for various

[p.82]
purposes.

And some of the funds were used for a money market short-term management account that Lehman Brothers had.

But I don't believe—and I could be stood corrected in my mind—all of the funds did not flow into Lehman. And all of the funds were not in that account.

We used it to purchase some Treasury stock which was a substantial program of over $3 million. We had to pay some taxes. We had various corporate and general purposes and then we had some excess cash that was left over from the divestiture program.

The excess cash was invested principally in the money market account which Lehman looked at with our concurrence.

But we also had some other investments which were made preferred stock of banks as well as some of these other equity investments that we later took which were managed out of the corporate office.

So it was a blend of all of those was the way the total restructuring program took place.

Q. Why did Bendix put any of the proceeds at all with Lehman Brothers in that money market account?

[p.83]

A. I just felt that with all of the matters going on at the time it was important that we had outside professional help executing orders because it was a substantial amount of money.

Other Treasury people had not developed a large expertise because we hadn't had a lot of excess funds up until then.

And for an organizational, administrative and control reasons it made sense to have professionals do that area that they were best at doing.

Q. Was that money market account liquid?

A. Again I haven't gone back and audited it. My recollection was it was supposed to be very liquid, meaning highly salable.

Q. So you could get the money out very quickly?

A. With one exception, yes. And that was a matter of great contention between myself and the Chief Financial Officer where they did not follow my orders.

But that's a separate story. But the short answer is yes.

Q. Okay.

A. Liquid to me meant less than 90 days. And in the

[p.84]
case I just referred to there were some maturities taken out beyond a year which was not pleasing to me because I wanted it to be highly liquid.

Q. Why did you want it to be highly liquid?

A. Because of what I felt interest rates were going to do and wanting the flexibility to move cash rapidly without a market loss assuming we needed the cash to proceed.

Q. Okay. Did you have any particular use of the cash in mind or—

A. Well, in terms of when you have that amount of cash interest rates are high and you are also looking at various acquisition candidates it is a balance between making sure your shareholders are getting a high return on the cash and at the same time you are ready to roll in terms of implementing an acquisition.

Also because interest rates were accelerating, at the time of interest rates accelerating if you believe that's going to take place you better be sure because you make more money, at least I think.

That's what they taught me at the University of Idaho.

[p.85]

Q. I'd like to go back to a couple of questions, Mr. Agee.

You mentioned in your idea of restructuring the company that you wanted to get a greater emphasis on high technology.

Why high technology? What made you go for high technology as opposed to something else that Bendix could have gotten into?

A. Well, you have to understand a good bit of Bendix was in high technology already.

The important part of the aerospace business was high technology.

My definition, you know, we could be here forever discussing what's high tech and what isn't.

But the bulk of aerospace was high tech. An important part of our automotive business base was high tech.

Q. What, out of curiosity—because I think of that as being not high technology.

A. Over the years Bendix was the originator of fuel injection which is today is the best system.

We pioneered that in the 60's and early 60's and fuel injectors, engine sensors, power brakes, radar braking.

[p.86]

All of these areas we were on the most advanced side of technology for braking and for ignition and for electronics in the car.

We were also the leading manufacturer of air braking systems including anti-skid braking systems which was the highest end of technology for braking trucks.

May sound kind of mundane to you, but when you are in the automotive business and you are trying to start and run a car more efficiently you were either on the

leading or lagging edge of technology. And we were on the leading edge.

The same is true for industrial machine tools. We had some of the most advanced transfer machines, flexible tools, robotics, et cetera.

So the part of Bendix that was not sold and the part that we were keeping and growing dramatically was on the leading or high end of technology for those businesses we served, a couple of exceptions to it but generally the bulk of the Bendix operations were there.

Q. Am I right when you have got the high technology aspect of a business you can expect a greater return on investment?

[p.87]

A. That's the hope.

Q. I mean that's why you would pick high technology as opposed to going into the lower end?

A. No. It is too simplistic. And it is more complicated than that. Normally companies that have priority products or especially those that tend to be leading technology rather than lagging technology at least historically they had served Bendix very well.

Good returns, good generation of jobs for our people and long-term security in terms of where you were in this world.

It is kind of grow or die is part of the American system whether you are on the high end or low end. And we wanted to grow.

Q. Was the feeling that the natural resource businesses and here I am talking about Bendix Forest Products, ASARCO, perhaps even UGC and Skagit had not done as well for Bendix historically?

A. Again you can't say that. In terms of operating income Bendix Forest Products had been okay, not brilliant, but in terms of total return over the period of time they owned it it was sensational.

Because we had a substantial income that was realized by the divestiture.

[p.88]

In the case of United Geophysical in the early years it was terrible. We lost our shirt. But including the value that the company got back at the time we sold it it was a very, very good return.

In the case of Skagit we had several good years in Skagit. We had several so-so years. And the price we got it for it was okay.

So total return from the time you bought it, operating income and the time that it left the company.

Q. But if you take into account what it gave you when it left the company and if you are comparing current operating results between high tech and forest products, UGC and leaving aside the potential sale which would have been your comparison if you decided to sell or not, wouldn't it, that you'd come out ahead with high tech is that—

MR. RATTNER: I'm not sure I understand. What's the question?

MS. HAMILL: I think he has understood the question. I am trying to focus on the decision to sell?

MR. RATTNER: Well, he told you the decision to sell was because there was an idea that some of

[p.89]
these businesses, the ones you mentioned were not mainline Bendix business, and it was time to go to move to some other areas.

You are trying to get him to tell you and I don't know whether this is a reality or not that, you know, in looking at the returns from those companies ASARCO, UGC, Skagit and forest products and factoring in what was realized on the sale was not a good return on some hypothetical high tech venture which we haven't even identified.

MS. HAMILL: True. I am looking at the thinking at the time.

MR. RATTNER: I don't know what the question is.

Q. I am wondering about the decision to sell the group of companies, Skagit, UGC, ASARCO, Bendix Forest Products.

And when you look at the returns, the operating returns you had had on those companies, how it compared to returns in the higher tech aspects of Bendix' business and whether that was a factor in the decision. That's all.

MR. RATTNER: If you are trying to get him to say—

[p.90]

MS. HAMILL: I'm not trying to get him to say anything, Mr. Rattner.

MR. RATTNER: By looking at the returns that it was a good idea to buy and sell businesses.

MS. HAMILL: Let's hear what he says. He may agree with you completely or he may not.

Or he may say it is much more complex than that as he has said many times.

MR. RATTNER: Let's start over again with the question. I don't mean to be argumentative, but I still don't understand the question.

MS. HAMILL: The question—

MR. RATTNER: Now this it has gone off to about 12 questions.

Q. I think we have said it about three times. The question is we were looking at the decision—Bendix' decision that it wanted a greater emphasis on high technology businesses.

MR. RATTNER: That was one of their acquisition thrusts.

Q. And the next question was why was Bendix moving in that direction and one of the ideas was that

perhaps there were greater profits to be—operating profits to be had in that line.

[p.91]

And then you come to the decision to sell certain companies.

Are you comparing then the operating profits that you would anticipate from the companies that were sold to the operating profits of what you might anticipate in high tech and even existing high tech businesses so that you get some—I'm looking for reasons why those companies were sold.

Now, we know that they were not core businesses, but was there also a concern that they were not as profitable on an ongoing operating business basis? That's the question.

MR. RATTNER: As what?

MS. HAMILL: As high tech, as the brakes and fuel injection, as the, you know, the high tech that Bendix had at that time.

A. It is a combination of several things. And again it is more complex than that.

But we had a concern about future stream of operating income from the businesses that we sold as it related to in some cases what they had done in the immediate past.

And in addition to that in terms of the return that we could get just investing it in

[p.92]
marketable securities at those interest rates at the prices we were able to sell those businesses.

So it was a combination of alternative returns with safety, along with not fitting a principal long-term strategy of the company.

And what weight that could put on those I can't tell you but those were some of the facts.

* * *

[p.96]
[MS. HAMILL:] Could you elaborate on that a little bit, the timing, for instance, of the Martin Marietta acquisition and what your ideas were and how it tied in with this obvious cash, large amount of cash that you generated?

A. Well, cash was part of it. But in terms of achieving the objective of new dimensions, high technology dimensions and the fact that there were various companies as I have already stated in here whether they were unrealized values or unrecognized values so all of those matters were there.

And during this period of time I think even

[p.97]
at this time I then in addition to owning 70 percent of RCA which I believe we did in April of '82 we had some minor stockholder positions in some of the other companies we have talked about.

Q. You mean Gould?

A. And I think we had sold Lockheed, Gould and General Dynamics.

I think we owned a little bit of that and we shortly thereafter started accumulating some Martin Marietta.

Q. Did the decision-making process that Bendix used to analyze the pros and cons of attempting to acquire Martin Marietta, were they the same or were they different from the analysis you had gone through?

A. They were similar in some respects but in some cases a bit more involved because of the idea that we may try to take a hundred percent of the company and that wasn't paramount at the time of the ASARCO.

Q. Did the Bendix Planning Department play a role in analyzing the Martin Marietta acquisition?

A. Yes.

Q. And did it make a recommendation?

A. They made many recommendations over time. And the way it took place is that we had generated a list of

[p.98]
15, 20, 25 companies in which we asked independent studies on each of those be made, and in some cases we asked them to rank them. In other cases we didn't ask them to rank them. And that was part of the input that we used, yes.

Q. And so I take it that Martin Marietta came out somewhere in the top of that rank?

A. Absolutely.

Q. Do you have any idea who did those studies on Martin Marietta?

A. Well, depends on which studies you are referring to. In the Planning Department.

Q. Yes, Planning Department is what I am thinking about.

A. I think Matt Lord and perhaps—well, Matt. I know he was the aerospace fellow.

And I am sure he worked on some of these. And Michael Rownay worked on them. And at one stage I think Larry Hastie, H-a-s-t-i-e.

Q. You might spell Rownay also for us.

A. R-o-w-n-a-y.

Q. Do you have any idea where those studies might be located?

A. I don't.

Q. Who made the ultimate management decision to

[p.99]
recommend the acquisition of Martin Marietta?

A. After all these hours you don't know the answer to that question, ma'am?

Q. The judge may not.

A. I think first the answer is I did. But in terms of recommendations I didn't view these studies as recommendations from these people as much as I wanted them to compare various companies and say how they felt about them.

But if somebody is saying, Well we recommend and therefore he did it. That just wasn't the way things worked.

Q. No one has said that, Mr. Agee, I assure you.

A. They get very defensive.

Q. They all say it was Bill Agee.

A. I made the decision.

Q. How if you wouldn't mind going into a little more detail, who [sic] would Martin Marietta have fit into the financial strategies and operational strategies outlined?

A. Very nicely.

Q. Can you elaborate a little bit on that specifically? I think the financial—if it fit into the financial strategies outlined in this memo?

[p.100]

A. First, we'd have to first go to the business. A large part of the business that Marietta were in were very

complementary and compatible with Bendix especially in aerospace they were prime contractors in many cases.

And we were a subcontractor. And a lot of our technology and management philosophies and businesses were complementary to one another.

In addition to that a part of the business that had not been run well in terms of the concrete business and the aluminum business and where they had spent hundreds of millions of dollars was an area in terms of restructures that we had demonstrated a good aptitude for handling.

And we felt we could help them out. And the way we tried to structure the transaction was that in such a way both shareholders both Bendix and Marietta would mutually benefit by the combination of the two companies.

Q. Would it be accurate to say that the cash that Bendix realized from the sale of Bendix Forest Products, Skagit, UGC and 20 percent of ASARCO played a role in the attempt to acquire Martin Marietta?

A. Yes, if you say played a role, certainly.

[p.101]

Q. What?

A. Well, obviously because of the liquidity that happened developed as a result of restructuring program it created both cash and debt capacity to allow us to grow in a fairly sizable way beyond the Bendix that was in existence then, combination debt capacity and excess cash.

Q. Would Martin Marietta have been Bendix' largest acquisition to that date?

A. Yes, absolutely.

Q. What sort of dollar amounts were you looking at very, very roughly? I just want to get a comparison.

A. Well, ASARCO was 120 something million. Warner and Swazey after netting out certain items was around 300 million.

Q. What was Warner and Swazey?

A. It was a machine tool company that was acquired in the fall, actually late fall, early winter of 1979, '80.

So that was the largest. And Martin Marietta when you assume the debt of Martin Marietta and all this it was probably a billion and a half dollar transaction. So on the order of five times the size.

[p.102]

Q. I'd like to go back a moment now to the ASARCO investment. And after all the investments that we have looked at, I think you have characterized once or twice the ASARCO investment as a passive investment?

A. Yes, ma'am.

Q. What do you mean by that?

A. No day-to-day or week-to-week management responsibility. The involvement that we had was at the Board level.

There was myself and one other Board member that sat in on the Board meetings and attended monthly.

And sometimes we'd miss a month or two. But it was a Board of Director involvement in the company as opposed to a management involvement.

Q. Was it like buying shares in a mutual fund or money fund? Was it that kind of passive investment?

A. Well, no. Because we had Board involvement.

* * *

[p.106]

MS. HAMILL: I am asking him specifically in his view what the ASARCO investment achieved for Bendix.

MR. RATTNER: I think you have in the record—but there are documentation as presented to the Board as to why it was an appropriate time to sell ASARCO and what the rationale was and that should basically serve—

MS. HAMILL: He was the Chairman at the time and he—

MR. RATTNER: I understand.

MS. HAMILL: And he authored it, initiated, made the decision to sell and made the decision to buy. And I'd like to know what he thinks it achieved.

MR. RATTNER: What he thinks what achieved?

[p.107]
The sale?

[MS. HAMILL:] ASARCO investment generally and obviously part of that is the sale.

A. Purchase the holding and the sale of ASARCO was a very attractive return on shareholders investment.

It served the shareholders well by returning to them a very high return on its investment.

And it also allowed the company an opportunity to learn more about the major business in this country which didn't go forward. And we achieved those two areas. Knowledge and the very good return to the shareholders.

* * *

[p.111]
[MS. HAMILL:] Now Bendix had two people on the ASARCO Board; is

[p.112]
that correct?

A. Yes.

Q. And did you have an influence on the ASARCO Board?

A. No.

Q. Did the ASARCO Board ever do what you and the other Bendix Director suggested they do?

A. Rarely, if at all.

* * *

[p.118]

[MR. RATTNER:] Did ASARCO rent or lease any property from Bendix?

MS. HAMILL: Excuse me. I will object to that. I don't know how in his capacity as Chairman he might have known whether there might have been a very minor lease of property.

MR. RATTNER: I think he can answer to his personal knowledge if he doesn't know of any. And if he wants to qualify it by something like that I have

[p.119]

no problem.

MS. HAMILL: You have to ask him first if he had any knowledge about that kind of a transaction. Would he have had that kind of knowledge?

You are talking about the Chairman. And he can't have dealt with nickels and dimes.

MR. RATTNER: He said that he talked about any capital expenditures of a hundred thousand dollars or more he would know about.

A. Maybe I can help if you don't mind. Anything and everything that had to do with ASARCO because I was the principal architect in buying it I was one of two Board members of Bendix.

In those days anything that happened to ASARCO and/or Bendix of an interrelation I am confident I would have known about just because of the nature and delicacy of the relationship.

And I know of none other than riding on their corporate plane once in Arizona actually from New Jersey to Arizona. And with a stop off in Corpus Christi, Texas.

There was never any reimbursement of expenses. And I never submitted expenses for Board meetings.

* * *

(Certification of court reporter omitted in printing)

(Exhibit D-16 omitted in printing)

EXHIBIT D-17 TO THE TRANSCRIPT OF THE DEPOSITION OF WILLIAM AGEE DATED AUGUST 21, 1986*

Office of
The Chairman and President

Bendix

Date March 31, 1978

To Members of the Long Range Planning Committee

From W. M. Agee

Subject Long Range Growth and Acquisition Planning

I. INTRODUCTION

We believe ourselves to be strong enough financially and managerially to warrant several major moves aimed at growth and diversification for the 80's.

- Growth and diversification in the Industrial/Energy area.

- Growth and rebalancing in the forest products area.

- Investment in other basic resources that are now depressed and undervalued but that offer strong profit possibilities for the 80's.

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* This memorandum was attached to the Stipulation of Facts (J.A. 152–198) in this case as "Exhibit E." (*See* J.A. 196). This document is cited in the Brief of Petitioner as "Exhibit E."

- Restructuring of Bendix Home Systems with a view to possible withdrawal in the next few years.

These actions might slow down somewhat the growth in our near-term earnings. But we would be building towards rapid growth in earnings in the early 80's.

We would be tilting our activities in the directions that may, on the whole, make us somewhat more cyclical than we have been but with compensating higher growth.

We would be well able over the period to keep our balance sheet within the 65/35 ratio that is so important to us. Each major acquisition would be structured to leave us positioned financially to take the next action.

We would probably face a significant increase in goodwill from acquisitions, but it is not entirely clear that this is so.

We would have no trouble in maintaining our growth in dividends.

The program that we have in mind would require some significant increase in our total capitalization. Part of this would come about in any case because we will generate an annual increase in net worth averaging approximately $100 million over the next five years. Leveraging this to the 2:1 debt ratio with which we are comfortable permits an increase in capitalization of over $300 million in the next two years and well over $750 million over 5 years. The use of preferred securities for acquisitions would, of course, strengthen our equity base

thus permitting further debt. The sale of common stock is also open to us.

We have given careful thought to these measures. Some of them would be viewed in financial and industrial circles as both conventional and expected. The departure into basic mineral resources would certainly come as a surprise. The number of actions coming within a fairly short period, and the fact that we may seek an equity position without control, would be out of keeping with the usual Bendix manner. Bendix has not made a major acquisition since 1972 and its one effort since—to acquire Excello—foundered.

All this is by way of providing perspective for the series of actions we will soon describe. But let us first describe where our present businesses are going.

II. STRENGTHENING EXISTING BUSINESSES

Four parts of our business are ripe for active sales growth while two of them are not. These two are:

- **Domestic Automotive (OEM)**—We do not wish to become relatively larger in the OEM area for it already dominates our domestic activities. We cannot hope to be significantly larger with Ford, our major customer, and, in fact, are fighting off stiff competition from home as well as from abroad. GM is not a major account nor is Chrysler and we cannot hope for significantly larger business from either of them—nor from American Motors. The desire of OEMs, particularly GM, for in-house integration is always a threat to us. Foreign manufacturers such as Volkswagen—or the Japanese if they come—will be marginal accounts for us.

Taking one thing with another we will be very content with annual *real* growth of 4-5% per annum, built mostly around strengthening our position in truck brakes and in automotive electronics.

• **Aerospace/Electronics**—This area is fortunate that commercial and general aviation markets will rise in the 80's, offsetting relatively declining military and space markets. Both government and commercial pricing pressures are rising and the competition is stiff. In real terms we can look for no better than 2-3% *real* growth with high-risk programs that we must continue to approach cautiously.

Now, consider the stronger areas:

• **Domestic Automotive Aftermarket**—Real growth of 7% per year can be hoped for. Fram has recently enlarged its capacity for both filters and spark plugs, and the challenge is to grow market share in the face of stiffening price competition and more suppliers in the relatively profitable and steadily growing aftermarket. In this market we are effectively barred from acquisitions.

• **Industrial/Energy**—

- The *machine tool* portion should have good success and be less cyclical while the automotive industry is converting to small, fuel-efficient vehicles. However, our narrow segment of the industry is relatively well populated and we cannot look for a strong growth. One year with another, 4-5% *real* growth is a good target. In the related field of automation and measurement, competition is severe, and recently we have yielded

market share but with new products and improved marketing we can hope for 4-5% *real* growth.

- The *cutting tools and abrasive parts* of our business cannot count on more than 3-4% *real* growth, taking one year with another.

- The *energy* part of the business amounts to about $140 million today and we can see *real* growth by the early 80's running at probably 10% and better per year. An acquisition would be needed for stronger growth but this is a field that has already been heavily picked over for acquisition candidates.

• **Forest Products-AFPC**—We are now a $400 million company—about $200 million in sales through our distribution yards, and the rest through felling and converting timber, making particle board, molding and miscellaneous other products. By 1982 we will be a $600 million company because we can enjoy 3-4% *real* growth through upgrading product, normal expansion of distribution yards and, of course, inflation which runs higher for building materials than for other Bendix products.

• **Bendix Home Systems**—This is our first profitable year—only a token profit—since BHS was acquired in 1972. We see no sustained, significant profitability in the group unless fresh and chancy investments are made to take us into new versions of manufactured homes in rapidly growing populated areas and into down-sized recreational vehicles. There are better uses for our assets. Disposition is indicated but that means facing up to a loss of $20 million in goodwill. As this matter is still under study, we will defer further discussion of it.

• **Bendix International**—We look for a significant turn-around within the next 12 months. DBA, a major loser, will be neutralized and by 1980 should be a good contributor. The sale of Ducellier and Air Equipement [sic] will release assets from profitless businesses. Our other international operations are acceptably profitable and should show *real* growth of 5-6% per annum.

Summing up, we can look forward to roughly 5% *real* growth annually on sales, plus inflation of 6% for growth of about 10-11% on the average through 1982. Assumed increases in efficiencies—ROS's, investment turnovers, investment base management—would raise the ROI to 14-16%. Even allowing for inevitable optimism, sales are expected to exceed $5 billion in 1982 with PAT nearing $250 million. On the average, the increase in our net worth, leveraged with matching 50% in debt, gives us financing power for acquisitions of about $150-200 millions annually. Please see Annex A for indicative 1982 numbers for sales, earnings and cash flow.

III. STRATEGIES FOR GROWTH

If we are to find strong growth in the 80's, acquisitions must be made. As noted before, we have the financial means for doing so.

Acquisitions may prove very expensive. Corporate balance sheets are awash with cash and borrowing power; banks and insurance companies are eager to lend; and corporations seem more willing—as we are—to acquire than to build. Premium prices above market and book are being paid in acquisitions. McDermott acquired Babcock and Wilcox at 74% above book. Kennecott paid

89% above book for Carborundum. United Technologies paid 118% above for Ambac. There are many other cases to point to. In most cases, cash is the trading medium but securities have also been used. If we mean to acquire, timidity in facing up to premium prices and goodwill will mean defeat in our quest.

An acquisition can vary in scope. 100% control through merger or purchase; 51% control; or more than 20% but less than 50% which permits us to consolidate earnings on our books but nothing else. With anything under 20%, we would register only dividends received. Generally speaking, the dividends will recover our after-tax cost of capital. Our share of earnings should return more than our cost of money but there are circumstances where this might not be so.

With so much for background, let us now describe three basic thrusts we find attractive:

1. Greater Involvement in Basic Resources

- Equities in mining companies that are heavy in copper and that are grossly undervalued. We are not a Johnny-come-lately to this idea. Indeed, we may very well have held it even before Curtiss-Wright began high-tailing after Kennecott. We foresee a boom in copper prices in the 80's. The book value of present facilities is very much under replacement costs.

- Forest products, particularly timber, still look attractive. However, companies selling their trees demand an enormous premium over book; those companies are very expensive to acquire. By contrast, *shares* in large diversified fibre products companies—wood and paper—are selling at or near book and not far

from Bendix' P/E. Share prices do not reflect tree prices but seem more geared to earning power.

For mining and large forest products companies, the issue of *control* stands out. For example, to acquire all of, say, Champion International (forest products) at 50% above market price represents an outlay of over $1.5 billions while Phelps Dodge (mining) at a 50% premium would have a market value of about $750 millions. In either case, 20% of the equity is within our means. We shall return to this.

2. Enlarging the Industrial/Energy Group

We should renew our acquisition efforts in this area. The likelihood of finding available a company that is a direct supplier of oilfield well equipment or of coal mining equipment is not too great; the field has been well picked over. The possibilities are somewhat better of finding firms that serve to monitor manufacturing and refining processes with a view, among others, to conserving energy, materials and improving quality. A few companies that serve the power and processing industries as Babcock & Wilcox does are possible candidates.

In the broader industrial area, numerous candidates are worth consideration as we shall see later. Desirably, they should interact well with several of our present businesses.

3. Round-Out Acquisitions of Modest Size

- AFPC for more distribution yards and for additional vertical integration in molding, k.d. furniture, cabinets, other manufactured products. These are

businesses we know and we want to increase the value added in these sectors.

• Small to medium size high technology companies that fill gaps in our product lines in aerospace and industrial or automotive, or that protect a supply source or represent a suitable alternative to facilities expansion. This kind of acquisition would not be very costly as those in the first two categories hence we shall ignore them hereafter in this document.

IV. ACQUISITION TARGET—MINING

We have had an acquisition of a mining company in mind for sometime because we are bullish on basic resources for the balance of the century. Why so?

There is general acceptance in the industrialized world that the threat exists of a shortage in basic commodities for the balance of the century. Rising industrialization, increasing physical remoteness of accessible ores, and depletion of rich ore bodies, political instability in areas hitherto providing rich ores and large shares of world supply (e.g., Africa), capital costs for new processes to mine and refine lower grade ores, the lengthening periods for large, new projects (five to seven years), costs of environmental controls, threats of cartel-like actions by the Third World, the very large scale of new mining projects—these and others account for the preoccupation with resources. Europe and Japan are particularly concerned because of their commodity poverty. The U.S. is concerned, too, because we are increasingly dependent on imported commodities and we are concerned for the inflationary pressures—the ratchet effect in particular—that rising commodity prices would create.

It is indeed accepted lore that the world faces a commodity problem. The OECD, the United States government, the European community, the world financial community generally address the issue in terms of the need to assure supplies at non-inflationary prices. Granted, much the same has been heard in the past and the worst fears have not materialized but for the exceptional periods as in post-Korea and in 1973-74. Indeed, today's depressed prices for certain commodities such as zinc and copper tend to allay fears about prices for the 1980's. Still, we should heed those who have studied the subject. There is no want of studies or official opinion on the subject.

• Professor John Tilton of Penn State has written an excellent small work entitled, "The Future of Non-Fuel Minerals,"* addressed to the actions that might be taken to *prevent* serious shortages in the 1980's.

• Secretary Simon wrote to Robert McNamara, President of the World Bank, in 1976, the opening paragraph of his letter reading:

(Excerpted from letter dated September 30, 1976, to The Honorable Robert S. McNamara from William E. Simon, The Secretary of the Treasury.)

"Dear Bob:

As you know, we have felt for some time that a major international effort is needed to expand worldwide capacity in minerals if rising world needs are to be met.

---

* The Brookings Institution, 1977

The sensitivity of developing countries to private investment in their mineral deposits and the possibility of harrassment [sic] and expropriation of resource investments after such projects have matured are a deterrent to resource development in poor countries. We believe new forms of investment are needed to overcome the mutual reluctance of invesfors and host governments."

The Treasury's position remains unchanged. In international fora the U.S. is giving support to measures to encourage investments in resources, even going so far as to promise tangible support for buffer stocks and related arrangements to encourage reasonable price stability. This, it is said, will encourage investment, lead to lower unit costs, while benefiting producers and consumers alike.

The Council on Foreign Relations has a study group working now on the raw material problems of the 1980's. In attendance are heads of major U.S. and foreign mining companies and, by a curious quirk, an officer of The Bendix Corporation. It is the common theme of the working sessions that a problem of the 1980's is the probable lack of investment in mining projects overseas because of uncertainties in many developing countries. It is indeed noted that investments are being increasingly directed towards more stable areas such as Canada and Australia. But recently depressed conditions have deterred such investments hence the common belief in the Council sessions that shortages will develop in the 1980's. In any case, the shift towards more stable areas may also mean higher costs because, generally speaking, ore grades are less rich there.

Our interests have run particularly to copper. It is one of the most widely used industrial commodities and has been in a depressed state for several years. So have the equities of leading copper companies. Further, several such companies produce other important raw materials along with their copper mining and refining. There are other important reasons which portend a good future in copper in the 1980's.

• Investments in new copper mining, smelting, and refining facilities have lagged because of depressed markets and unfavorable political and economic conditions in the Third World where much of the richest copper ores are to be found. Hence, there is the threat of capacity shortages in the 1980's, driving prices upwards.

• Technological threats to copper appear to have reached their limits. Displacement has already occurred by aluminum and there are limits as to displacement by optic fibers.

• New capacity is horribly expensive to organize. Existing facilities such as those of Kennecott or ASARCO cost about $3,000 per ton of annual capacity while a green grass project costs over $8,000 per ton, rising by 8% or more per year. Those who have low-cost installed capacity have an enormous advantage over newcomers. It is said that no project would be started today unless copper prices averaging well over $1.00 per pound *in 1975* prices were foreseen for the mid-1980's—the length of time to bring a project into being. By contrast, the large American companies with stateside production are believed to break-even today at prices at around 70¢ per pound on the average and, while variable costs will rise, the bulk of these costs are in a low price capacity in place.

There are reasons to be cautious about copper. Years ago, orderly production, marketing, and controller pricing in the interest of stable markets and profit maximization were assured as 75% or more of production was in the hands of seven or eight firms, mostly U.S. owned. Their control has fallen. Today, about 50% of world capacity is in the hands of so-called weak sellers—governments of developing countries, heavily dependent upon mineral exports for foreign exchange earnings. So long as export prices cover at least the foreign exchange costs of producing for export, they will do so. No matter their failure to recapture capital costs, leave alone to earn a return to finance further expansion. The governments, major employers in the mines, will keep them going virtually under any conditions. Foolhardy as this is recognized to be, inter-governmental efforts to agree on production or export quotas have failed. Of course, these governments are *not* accruing the capital required for new capacity to replace aging, depleted mines and smelters.

The upturn in copper prices awaits some combination of stronger demand—worldwide recovery, more orderly international marketing, and a reduction of heavy stockpiles that refuse to drop because of continued high production. Some evidence of stronger demand is becoming evident.

The gamble is on when the turn will come—as it will. A big run-up in prices before the early 1980's cannot be expected, in part because substantial new capacity is coming in by then. But thereafter little capacity can be added because too few projects are in the works. In past recoveries from recessions, stockpiles have fallen quickly as supplies move from producer to consumer. And there is pressure in a number of countries for governmental

action to build up strategic and economic stockpiles partly to relieve the depressed market. Intergovernmental actions along the lines of a buffer stock is [sic] also a possibility but are not to be reckoned upon.

It is important in this area of commodities to remove oneself from rapt attention to short-term movements. Prices can shift drastically in short periods and the euphoria of this moment can change to dismay soon thereafter. It is the long-term perspective that should guide us so long as we are sure that the near-term effects are not unduly harmful. For learned opinions of the future for basic commodities—copper included—in the 1980's, please see Annex B.

Qualifying the Candidate

In looking for an acquisition candidate, one would seek a firm having these qualities among others:

1. Capable management.

2. Undervalued assets—a stock market price well under book value and assets in good condition that could not be replaced at several times their book cost.

3. Product diversification. Copper is a leading mineral but there are others that also promise strong futures.

4. Good balance between mining, smelting, and refining capacity.

5. Geographic diversification to serve world markets and to avoid undue dependence on

any one area. For example, Latin American production generally serves Europe and Japan while U.S. production almost wholly serves this market.

6. A record of ability to organize, navigate, and survive in the volatile Third World—if much of its assets are there.

7. Participation in projects whose evident potentials are yet to be realized and whose assets values do not appear on the books.

8. A respectable balance sheet, one that suggests adequate cash flow for debt service and necessary capital outlays notwithstanding stinted profits.

9. Costs of environmental controls that are reasonably manageable and substantially already covered.

Orange Crush is a firm we considered. It lacked many of the foregoing qualities but it possessed enormous amounts of cash as a result of a disposition. Subsequently, it bought a major U.S. company for cash costing nearly $600 million at a premium of about 90% above book. We became convinced that a play would be made for the firm to realize on its underutilized assets.

Blackie is a firm which nearly matches the qualities we seek. The Annual Report for 1977 makes for easy reading and provides much the kind of data to be found in a 10K. Particular attention should be paid to Blackie's product diversification particularly in silver, zinc, asbestos, lead, coal and other profitable minerals and to its rich holdings

in the M.I.M. Holdings (Mt. Isa project) in Australia reported to be one of the largest mining operations in the world. Allegedly, Blackie's holdings in this project at market value exceed the market value of Blackie's own equities. While it is not possible to establish that this is so, no doubt they do have value considerably in excess of that on Blackie's books.

Attention should also be given to Blackie's other equity holdings which generate attractive although cyclical dividends, e.g., its minority holdings in Revere Copper & Brass of 33%.

Further attention should be given to Blackie's seemingly comfortable position in the area of pollution control.

Some key data on Blackie reflecting the volatility of its markets—are:

	1974	1975	1976	1977
EPS	$4.66	$.95	$1.58	($1.10)
Stock Price—High-Low				23-5/8 /$13
Book Value Per Share				$30.28
No. Shares Outstanding				- 26.7M

After consultation with a limited number of Directors and general advice as to our intentions with others, we began in January to purchase shares of both Orange Crush and Blackie.

Our intentions were not to speculate in the market but rather to give us a head start in the event we decided to move towards an equity position or [sic] control. As of March 30 we have acquired 231,500 shares of Orange Crush at an average price of $22.68 while the closing price on March 29 was $25 7/8. This represents just .7% of outstanding shares. In the same period, another firm acquired 9.9% of the firm and has indicated its intention to seek a slate of Directors who will realize for shareholders the underlying value that it claims has been mishandled by present management. A proxy fight to elect a slate of Directors is underway.

We have no reason to believe tht [sic] Blackie is the object of an attack by any party though there has been a sudden rise in share volume and price in recent days.

Clearly, there is evident interest in resources by many companies: ARCO which bought Anaconda; Standard of California's purchase of a 20% equity investment in AMAX; Exxon which just paid over $100 million for a Chilean copper mine; and Curtiss-Wright's pursuit of Kennecott mirror this interest. Wall Street commodity analysts are speculating over whether mining companies are take-over targets because of market values well under book values.

We have debated whether we should seek total ownership of Blackie, simple majority, or 20% in order to consolidate earnings. Book value is over $30 per share. Market value is about $20 per share. We own 1,130,000

shares or 4.2% of the total at an average price of $16 per share. Assuming that we wound up paying $25 cash per share for its 27 million outstanding shares, total cost would be about $675 million, which would require a major pre-financing arrangement. A simple majority would imply about $340 million cash which we could probably manage although we would then want to contemplate further steps to tender for the remaining 49%. Quite obviously, a 20% position imposes a much smaller burden on us, manageable with our present resources and implying a lower cost per share than entailed in a much larger position.

We favor the 20% position and not just because of our ability to manage this with our present financial structure. Rather, we want time to become more familiar with the company and the industry before chancing a significantly larger position. Further, we do not want excessive exposure to the cyclicality of Blackie's earnings. These earnings should rise in the next few years but what goes up will in due course come down. What's more, we want to leave ourselves the financial mobility to undertake one or the other or both of the forest products and industrial acquisitions hitherto mentioned. Blackie (20%) and one other can probably be done within the year but acquiring 100% of Blackie would probably interfere with any other near-term sizeable acquisitions.

On the matter of control. It does not follow that our influence in the company is only nominal because we would lack 51%. If we were to enjoy a good relationship with Blackie—with a seat or two on the Board—our influence could be felt. Much would depend, of course, on whether Blackie resisted or accepted our presence—about which more is said later. Even if it initially resisted,

in due course it could come around to accept if not welcome our presence and advice.

Particular attention should be given to profit prospects for the near-term. It is not clear that Blackie will be profitable in 1978 or, for that matter, in 1979. In 1977 it showed a $30 million loss in part because of unusual write-offs, strikes and other reasons. A dividend of 70¢ was paid in 1977 which was well under the dividend paid in 1974 of $1.43, reflecting profit volatility. The indicated dividend for 1978 is 40¢ per share. Thus for our 20% we might get the worst of two cases: Our 20% share of any loss and very small cash flow because of reduced dividends. Offsetting the loss would be the amortization of the negative goodwill of $5.00 per share (book value less share value).

This is, of course, the blackest picture. One could equally well forecast profit recovery in 1978, certainly by 1979. The impact of various assumptions as to Blackie's earnings on our EPS appear on the following page.

As to cash flow, it appears that Blackie's amortization and minority earnings in other enterprises are more than sufficient to cover debt service and capital outlays in the near-term, so we believe.

	Blackie's Earnings $ Million	Blackie's Assumed Earnings $ Million			Impact on Bendix Earnings of ABC		
		A	B	C	A	B	C
1973	99.4						
1974	124.6						
1975	25.4						
1976	42.3						
1977	(29.5)*						
1978		–	–	25	–	–	$.22
1979		50	25	75	$.44	$.22	$.66
1980		100	50	125	$.88	$.44	$1.12

*Includes $39 million of unusual charges for plant and mine operations shutdown.

We must anticipate that Blackie will be hostile to our assuming a 20% position. It knows that we already have a modest position and has indicated that it would like it to stay modest. In informal conversations—in no manner of speaking can one describe these as negotiations or as providing insider information—Blackie management has been very cordial to Bendix and has said that its investment should prove to be a wise one.

If we decide to proceed beyond 5%, an SEC Schedule 13D must be filed within 10 days after passing beyond 5%. Perhaps another 5% could be acquired in those ten days—just a judgment—at rising prices. Once our hand were shown—that it was our intention to go to 20%—the share price would rise even more—unless Blackie took action through State and Federal courts,

through the SEC and otherwise to delay and thwart any further purchase by us.

To state this differently, we must anticipate a fight from Blackie even though we were to declare our intentions to remain as an entirely passive shareholder. It is possible that Blackie will be friendly to us, considering that it might be attacked by a less congenial party.

It is also possible that others interested in Blackie would enter the fray. Possibly, a tender to acquire a larger position than ours or to thwart our efforts would be made by another group. If the bidding became too severe causing excessive price rises, we would have to regroup: settle for less than 20%; liquidate our holdings or plunge on. We do not want to pay an average price that approaches book value of $30. A nominal price of $25 allows for a substantial share of the acquisition of 20% at well under $25, the remainder at or above it. Only an immediate tender by someone else at well over book value should bar us from acquiring 20% at significantly less than book value. Negative goodwill would accompany our 20%. At $25 per share, 20% would cost $135 million.

In connection with the 13D, we would have to face the issue of stating our intentions regarding nominating Directors on Blackie's Board. This is a matter we would like to discuss with our Board members.

Assuming success, what would happen next? We would organize ourselves to form a shadow group here to learn as much as we can about the company and the industry. If our nominees entered Blackie's Board, we would gain access to insider information which could inhibit but not bar further acquisition of shares. Within a

time that cannot now be defined, we would decide on whether to enlarge or sell our holdings and, if so, how to do so. It is our intention not to let the matter dawdle.

Finally, one note on the reaction in financial circles to our acquiring 20% of Blackie. Probably, on the whole it will be somewhat negative:

- It is not a business Bendix knows.
- We will have no management control.
- Earnings are clouded for the near-term.

But it is quite possible that reaction will be quite different:

- We are buying an undervalued asset for the 1980's.
- We are not tying up our management. It is free to concentrate on matters it knows best.
- Bendix is an interesting company—moving into areas beyond its traditional activities.

If the reaction is negative—and Wall Street experts are divided on this—we must anticipate some reaction on our stock price, or lagging growth in our price if the general market moves up. If that happened, of course, other acquisitions would become somehwat [sic] more difficult for us to make.

At this point two questions should stand out:

1. Why Blackie?

2. Why now?

In fact, these two questions come together. It is true that we have not considered other mining companies but for Orange Crush and even that was barely done. But the action on Orange Crush has generated in some measure a sympathetic reaction on Blackie's stock price. It is now 20 and was 13 within the past two months. Our activity accounts only in part for the rise for the market has moved up even when we have been absent from it.

Had we waited for a thorough study of all candidates for our entry into mining, we would have been greatly delayed and it was our judgment that delay was harmful to achieving our purpose. In any case, our brief review of the company and the industry and the exposure we have had with members of the mining industry leave us feeling comfortable with selection of Blackie. We are, after all, so well reminded of conflicting adages: Look before you leap. He who hesitates is lost.

V. FOREST PRODUCTS

AFPC supplies from its own timber only about 20% of what it converts or remanufactures. We live off of forest service timber for almost all of our remaining conversion needs and that supply is increasingly scarce and heavily bid for. Tree prices have gone wild in recent years. Since we acquired AFPC in 1970, our tree values have increased from 15-25% per annum, depending on species.

There are no timber holdings near AFPC's sawmills that it makes economic sense to buy. Looking elsewhere in the Northwest, there are three companies, each smaller than AFPC, that we believe might be

available. If bought at a proper price, we would spread our geography and have rising timber values in the 1980's. Of course, the sellers know that and have set a present value on the timber that recognizes the anticipated gains in the 1980's.

The three properties are:

	Estimated Acquisition Price $ Millions	Sales (1977) $ Millions
Brooks-Scanlon	90-100	74
Pope & Talbot	80-85	119
Medford	75-80	106
AFPC		411 (1978)

Annex D shows their timber holdings and other facilities. They are all much lighter in conversion and distribution than AFPC and two of them have less timber acreage than AFPC. Studies now underway will indicate the price we can afford to pay without excessive dilution or without punishing the D/E. We must expect to pay at least 75-100% above book value because timber holdings, the main asset, are booked at nominal values. For example, Brooks-Scanlon carry their 242,000 acres of trees on their books at $7.2 million while at anything like a bargain price for a reasonable mix of species and height and quality that acreage should sell for at least $500 per acre, quite possibly much more. AFPC's 170,000 acres and roads are carried on our books at $31 million but we reckon our acreage—with our rich species—to be worth

at least $1,000 per acre and we would probably reject an offer at that price.

The (pro forma 1977) impacts upon Bendix EPS and debt ratio of these transactions are:

	Brooks-Scanlon*	Medford**	Pope & Talbot**
Δ Impact on EPS			
All Cash	+ .18	+ .04	+ .04
65 Stock/35 Cash	- .08	- .10	- .21
Pooling	- .19	- .30	- .42
Δ Debt/Equity			
All Cash	+ 5 points	1 point	- 1 point
65/35	+ 1 point	-	+ 2 points
Pooling	- 1 point	4 points	+ 8 points

* Brooks at asking price
** Medford and Pope and Talbot at 75-100% above book value.

The earnings of these companies are modest in relation to acquisition prices; they cannot be bought on the basis of customary P/E's in the 6-10 range. We must buy them based on *future* earnings built around the appreciation in the value of trees. We must also anticipate some near-term capital outlays to improve facilities and to increase conversion capacity. Studies are not yet complete on these matters; the numbers used are only directional purposes.

An acquisition for stock is dilutive in all cases and we would prefer a cash or stock/cash transaction. Moreover, we cannot reckon on a rapid growth in earnings inasmuch as we do not want to sell logs, and conversion and distribution facilities are limited—time and investments being necessary to build them up. Some spin-off benefits to AFPC would be realized. But we should understand that anyone of these purchases is for growth in the 1980's—in a cyclical business—and not for the near term.

All of these companies have significant blocks of shares in limited hands. It is possible to probable that stock transactions will be insisted upon for tax reasons. However, we are confident that if we strongly want one of these companies, we can arrange it. We should also note that a stock transaction could place a sizeable amount of Bendix stock in a limited number of hands. With Brooks-Scanlon as an example, a $100 million transaction would result in 3,000,000 shares of Bendix stock being issued and we have reason to believe that at least half of that would be held by two families. That would then represent about a bit under one-eighth Bendix shares outstanding.

The alternative is, as we said before, to take over one of the larger forest product companies. The sheer size of these companies makes such a takeover unreachable. These are illustrations:

	Investment Base $ Billions
Champion	2.0
Crown Zellerbach	1.4
McMillan Bloedel	1.0

Even 51% is an enormous stretch for us. But 20% is within reach. In this case, we would be more inclined to remain an equity holder than to seek management control. Conceivably, a merger of companies would not be ruled out as with Montgomery Ward and Container Corporation years back.

A 20% portion—and assuming that we have to pay 50% over market value—gives us these directional numbers:

	EPS Pro Forma Impact 1977	D/E
Champion	+ .50	+ 15
Crown Zellerbach	+ .39	+ 13
McMillan Bloedel	- .06	+ .9

Again, the cash transaction improves our EPS but worsens the D/E.

Here, again, we might well face the same kinds of issues raised in connection with Blackie: resistance by present management—possibly a fight; the premium to

be paid, particularly since we do not see the same kicker for the 1980's as for Blackie. But we do see greater near-term assurance of income than Blackie can provide.

Our inclination favors the smaller acquisition which we would control wholly but there is no doubt that there is greater underlying value and near-term benefit in a 20% position in a successful major forest products company than is to be gotten from one of the smaller ones.

The Board's view on the choice between these two ways of enlarging our position in the forest products area would be welcome to us.

VI. INDUSTRIAL ENERGY

In the industrial energy area we have, broadly speaking, three directions in which to go: acquire a company broadly described as industrial; select a company focused on one specific sector of industry, generally outside of our present businesses; or choose a company which particularly related to one of our business groups. Let us illustrate by referring you to Annex C, a list of 21 companies that have received our close attention. But here we will mention just four companies to make our point:

Foxboro—concentrated on process control equipment, generally outside of our businesses.

Cutler-Hammer—electrical and process control equipment, one-fourth of its business directly related to aerospace activities.

Clark Equipment—an industrial conglomerate that makes motive power transmission equipment, construction equipment, forklifts and materials handling equipment, and other products.

Foster Wheeler—design and erection of power and processing plants.

Other things equal, we prefer companies whose businesses closely complement ours—but that will not raise anti-trust problems. We have reviewed several hundred companies, well over eighty of them in some detail. Twenty to twenty-five repeatedly capture our attention, most being on the annexed list just referred to. We cannot expect to acquire any of these companies at less than 30% premium above market and 50% or above is more likely. But just to illustrate the impact of acquisitions at a nominal premium price—30%—let's look at seven companies on the following page.

In all cases a cash transaction will carry our debt ratio well beyond the 65/35 limit. A stock transaction is to be preferred only that causes a dilution of some consequence. A combination stock/cash transaction represents a happy compromise and that will be one of our objectives in any transaction. Preferred stock would be used where possible. Where dilution is evident we will give particular attention to the profit growth of the acquired company so as to foresee when dilution may be ended.

So as not to minimize the problem—dilution or debt ratio—let us note again that heavy premiums are now being paid—30% will never do—and goodwill accompanies a cash transaction.

PRO FORMA IMPACT ON BENDIX
1977

	Foster Wheeler	Gardner Denver	Hyster	Amer. Hoist & Derrick	Foxboro	Cutler-Hammer	Clark Equip.
ΔEPS							
Cash	+.57	.11	1.18	.44	.74	.53	1.49
Pooling	-.32	-1.18	.07	-.21	-.52	-.45	-.74
D/E							
Stock	+.1	+.1	–	+.3	-.2	+.4	.3
Cash	+.15	+.25	+.15	+.13	+.17	+.20	+.30

Based on 30% premium above market price at various recent dates.

Also bidding contests are frequent so a friendly take-over is to be preferred to a fight-out. But in any move we make, a fight may be anticipated. To thwart it, we may have to offer all cash or pay a very high premium if we offer both stock and cash, or stock alone.

Conversations through intermediaries are underway with several of the companies to determine the interests in a friendly acquisition. If that cannot be arranged, we may decide to tender for one or another of these firms, but would, of course, return to the Board for authorization to do so.

/s/W.M. Agee

JJ
Attachments

ANNEXES

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(Annexes B, C and D omitted in printing)

1978-1982 LONG RANGE PLAN
CONSOLIDATED BENDIX WITH ACQUISITION ASSUMPTIONS
($ in Millions Except Per Share Values)

	1972	1973	1974	1975	1976	1977	1978	1979	1980	1981	1982
Total Plan											
Sales	$1,763	$2,212	$2,464	$2,590	$2,947	$3,269	$3,477	$3,847	$4,318	$4,817	$5,25
PBT	117	132	148	135	192	219	252	284	342	413	473
EPS ($)	2.53	3.14	3.48	3.66	4.74	5.27	5.89	6.57	7.93	9.57	10.81
Dividends/Shr. ($)	1.20	1.20	1.31	1.39	1.66	2.00	2.36	2.63	3.17	3.83	4.32
Net income	56	69	76	80	105	118	133	150	183	222	254
Investment T/O (x)	1.8x	2.2x	2.2x	2.2x	2.6x	2.8x	2.8x	2.8x	2.9x	3.0x	3.0x
ROI (%)	7.6%	9.1%	9.8%	9.5%	11.4%	12.4%	12.6%	13.1%	14.4%	15.6%	16.1%
ROS (%)	6.3%	5.9%	6.0%	5.2%	6.5%	6.7%	7.3%	7.4%	7.9%	8.6%	9.0%
Year-End Debt Ratio (%)	31.5%	35.7%	36.0%	33.2%	29.7%	28.0%	26.1%	25.0%	23.5%	20.7%	17.0%
Year-End Surplus Borrowing Power Assuming Target Debt Ratio of 35%						$ 129	$ 177	$ 218	$ 274	$ 370	$ 501

EXHIBIT D-18 TO THE TRANSCRIPT OF THE DEPOSITION OF WILLIAM AGEE DATED AUGUST 21, 1986 (Excerpt from the Records of the Meeting of the Board of Directors of The Bendix Corporation Held April 13, 1978, omitted in printing)*

Office of
The Chairman and President

Bendix

Date April 12, 1978

To Board of Directors

From W. M. Agee

Subject Acquisition of Shares of ASARCO

The Board's consent is asked for the cash acquisition of up to 20% of the common shares of ASARCO at a cost not to exceed $134 million. Of this amount, we already own 4.9% at a cost of approximately $22 million. We would pay ASARCO up to $92 million for 12% of the shares and would expect to pay an estimated $20 million in the open market for an additional 3% of the shares:

Recapitulation

Presently owned	4.9%	$22 million
12% to ASARCO	12.0%	$92 million
Further Aftermarket Purchase	3.1%	$20 million
	20.0%	$134 million

This acquisition clearly will aid us in our acquisition strategies whose purposes are:

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* The documents included in Exhibit D-18 were attached to the Stipulation of Facts (J.A. 152–198) in this case as "Exhibit F." (*See* J.A. 196). The memorandum dated April 12, 1978, from W.M. Agee to the Board of Directors of The Bendix Corporation included in Exhibit D-18 is cited in the Brief of Petitioner as "Exhibit F."

- Reducing our dependence on the relatively slow-growing aerospace and automotive OEM market.

- Broadening our Industrial/Energy Group to give it size and better definition.

- Generating good cash flow in the early 1980's to meet growing capital needs, particularly in aerospace/electronics to permit it to hold its own in stiffening markets.

- Broadening our holding in basic commodities, particularly forest products and in non-fuel minerals that should prosper from the energy problem or which have other reasons for strong market position in the 1980's.

ASARCO clearly meets the last objective. We have actively in mind acquisitions in the forest products and industrial areas which we hope to bring to the Board in the not too distant future.

BACKGROUND ON ASARCO

ASARCO is engaged in copper mining and production in the U.S. and abroad, principally in Latin America. It is also a significant producer of lead, zinc, silver, asbestos, coal and other lesser minerals. ASARCO also has important equity holdings in Australia, Mexico, Nicaragua, Canada and elsewhere which make significant contributions to earnings. It is a leading smelter and refiner of metals for its own account and under toll arrangements.

ASARCO's Primary Metal Production in 1977
(in thousands)

Copper	$214,230
Silver	185,864
Lead	100,113
Zinc	53,006
Other	180,080
	$733,293

ASARCO's other major sales come from coal and asbestos.

In the last five years, ASARCO's sales have ranged from $1,004 million to $1,344 million. Last year was near its low—$1,046 million—caused by extended strikes and depressed market conditions for copper and zinc.

Silver and lead enjoyed good years as did asbestos. ASARCO's earnings are highly volatile, reflecting the volatility of its markets, viz:

	$ Millions	Per Share
1973	99.4	$3.72
1974	124.6*	4.66
1975	25.4*	.95
1976	42.3	1.58
1977	(29.5)*	(1.10)

***Unusual Items**

1974	(39.8)
1975	(20.5)
1977	(39.0)

Our Interest in Commodities

There is general acceptance in the industrialized world that the threat exists of a shortage in basic commodities for the balance of the century. Rising industrialization, increasing physical remoteness of accessible ores, and depletion of rich ore bodies, political instability in areas hitherto providing rich ores and large shares of world supply (e.g., Africa), capital costs for new processes to mine and refine lower grade ores, the lengthening periods for large, new projects (five to seven years), costs of environmental controls, threats of cartel-like actions by the Third World, the very large scale of new mining projects—these and others account for the preoccupation with resources. Europe and Japan are particularly concerned because of their commodity poverty. The U.S. is concerned, too, because we are increasingly dependent on imported commodities and we are concerned for the inflationary pressures that rising commodity prices would create.

THE OECD, the United States government, the European community, the world financial community generally address the issue in terms of the need to assure supplies at non-inflationary prices.

The World Bank has stepped up its program for lending to developing countries for basic resource development. Regional banks such as the Inter-American Development Bank are doing the same. Secretaries Simon and

Blumenthal have expressed their concerns for the lack of investments in resources for the 1980's. And the U.S. is lending support to the principle of buffer stocks to foster stability in prices and demand as an aid to assured supply.

COPPER

Since copper is the core of ASARCO's business, our attention in this paper is principally on that metal: It is a widely used industrial commodity, subject to wide fluctuations in price and less wide fluctuations in demand and supply.

About 60% of the free world's supply comes from outside the U.S. Demand rises steadily but price moves erratically as stocks change and as recession, boom, political developments, currency movements, and other factors influence markets. For the past several years over-supply has prevailed in part because of the worldwide recession but also as the developing countries, now controlling over half of the free world's supply, continue to press production in the face of slow growth in the market. Stocks are now unduly large.

Prevailing opinion in governmental circles, in industrial, and in financial circles holds that copper may remain depressed for another year or two. But by the early 1980's, forecasts hold that it will be a boom commodity. Among these reasons are:

- Investments in new copper mining, smelting, and refining facilities have lagged because of depressed markets and unfavorable political and economic conditions in the Third World where much of the richest copper ores are to be

found. Hence, there is the threat of capacity shortages in the 1980's, driving prices upwards. A shortage of smelting capacity is of particular concern but, fortunately for ASARCO, it is well fixed.

- Technological threats to copper appear to have reached their limits. Displacement has already occurred by aluminum and there are limits to displacement by optic fibers.

- New capacity is horribly expensive to organize. Existing facilities such as those of Kennecott or ASARCO cost about $3,000 per ton of annual capacity while a green grass project costs over $8,000 per ton, rising by 8% or more per year. Those who have low-cost installed capacity have an enormous advantage over newcomers. It is said that no project would be started today unless copper prices averaging well over $1.00 per pound *in 1975* prices were foreseen for the mid-1980's—the length of time to bring a project into being. By contrast, the large American companies with stateside production are believed to break-even today at prices at around 70¢ per pound on the average and, while variable costs will rise, the bulk of these costs are in low price capacity in place.

- Electrification is likely to grow as electrical energy supplants other forms of energy, development proceeds in the emerging Third World, solar energy grows in importance, desalination plants rise in importance, new construction sees copper displacing aluminum, which had earlier displaced it, and as copper

displaces aluminum in other areas where thermal/electrical efficiency is of paramount importance.

The upturn in copper prices awaits some combination of stronger demand—worldwide recovery, more orderly international marketing, and a reduction of heavy stockpiles that refuse to drop because of continued high production overseas. Some evidence of stronger demand is becoming evident.

A big run-up in prices before the early 1980's cannot be expected, in part because substantial new capacity is coming in by then. But thereafter little capacity can be added because too few projects are in the works. In past recoveries from recessions, stockpiles have fallen quickly as supplies move from producer to consumer. And there is pressure in a number of countries for governmental action to build up strategic and economic stockpiles partly to relieve the depressed market.

ASARCO's Attributes

1. Capable management.

2. Undervalued assets—a stock market price well under book value and assets in good condition that could not be replaced at several times their book cost.

3. Product diversification. Copper is a leading mineral but there are others that also promise strong futures—silver, asbestos, coal.

4. Good balance between mining, smelting, and refining capacity.

5. Geographic diversification to serve world markets and to avoid undue dependence on any one area. For example, Latin American production generally serves Europe and Japan while U.S. production almost wholly serves this market.

6. A record of ability to organize, navigate, and survive in the volatile Third World—and much of its assets are there.

7. Participation in projects whose evident potentials are yet to be realized and whose assets values do not appear on the books.

8. A respectable balance sheet, one that suggests adequate cash flow for debt service and necessary capital outlays notwithstanding stinted profits.

9. Costs of environmental controls that are reasonably manageable and substantially already covered.

Particular attention should be paid to ASARCO's product diversification, particularly in silver, zinc, asbestos, lead, coal and other profitable minerals and to its rich holdings in the M.I.M. Holdings (Mt. Isa project) in Australia, reported to be one of the largest mining operations in the world. Allegedly, ASARCO's holdings in this project at market value exceed the market value of ASARCO's own equities. While it is not possible to establish that this is so, no doubt they do have value considerably in excess of that on ASARCO's books.

Note should also be taken of ASARCO's other equity holdings which generate attractive, although cyclical dividends, e.g., its minority holdings in Revere Copper and Brass of 33%.

Further attention should be given to ASARCO's seemingly comfortable position in the area of pollution control. It reports that its facilities are in good condition and it is believed that it had already met relatively more of its outlays for pollution control than is so for the industry generally.

Appropriate Cautions

An acquisition in ASARCO involves several departures for us.

First, it would put us into base and precious metals, and other minerals—in which we are not now involved. This departure should not concern us since we are confident of markets for the 1980's and have negotiated a good price for ASARCO's stock. Its management is also well regarded. A consultant known to several Board members—Mr. Robert Koenig [sic]—formerly President of Cerro de Pasco, has known ASARCO and other mining companies for many years and is intimately familiar with ASARCO's holdings in Peru and elsewhere. Mr. Keonig [sic] gives good marks to ASARCO's management. He has endorsed this arrangement, having been advised of it under an oath of secrecy.

Second, we would not acquire the controlling interest in the company, but rather would be a minority holder of 17% of the shares with the intention in due course to increase our holdings to 20%. We favor this position essentially for two reasons: One is to avoid an undue

share of Bendix' assets going into a new business. And, second, we want to avoid excessive exposure to the cyclicality of ASARCO's earnings.

It does not follow that minority ownership means lack of influence. With two seats on the Board, our voice will be heard. With friendly relations, our insights and judgments will be recognized. Our shareholdings always make us a force to be reckoned with. As one person has been heard to say, "When the Directors representing Standard of California (SOCAL)—owner of 20% of AMAX—speak, they are listened to."

We have to assume that the Directors of Cutler-Hammer will also listen to Koppers, which in a friendly arrangement, is to acquire 20% of Cutler-Hammer.

The Nature of the Transaction

Late last year we became persuaded of the desirability of entering the mining industry. Two companies, Kennecott and ASARCO, struck us as obvious candidates. Kennecott was rich in assets but poor in operations. ASARCO was known to view the future with cautious optimism and on several informal occasions had made known its high regard for Bendix.

After consultation with various members of the Board, we began to purchase the shares of both companies in order to position ourselves to proceed with either and to do so while the shares were way undervalued. After accumulating 231,500 shares of Kennecott at an average price of $22.57, we ceased our purchases. We had decided that Kennecott was not our entry. Moreover, others had entered the bidding fray. The stock closed on April 10 at $26.62.

We proceeded with ASARCO, accumulating 1,300,000 shares or roughly 4.9% at an average price of $16.50, while the stock closed on April 10 at $19.87.

Meanwhile, we had informed ASARCO of our intentions to accumulate and of our friendly intentions. The market roiled over this period, sparked in part by the Curtiss-Wright assault on Kennecott; traders and arbitrageurs looking for a bidding contest; other parties having in mind a takeover; sheer speculators; and of course, our purchases. In the past several months, prices have ranged from $13 to just over $20.

Deciding that a 20% position was desirable, we met with the Long Range Planning Committee of the Board to describe our intentions. We stated that ASARCO might favor our entry through a private placement—either a convertible preferred or common shares. The Committee endorsed the idea, following which in conversations with ASARCO, it became clear that it favored our entry, but not through a convertible preferred.

The following terms were agreed [sic] subject to Board approval:

Terms of the Arrangement with ASARCO

1. Bendix will purchase 4 million shares from ASARCO at the price of $23 per share for a total value of $92 million. Together with the 1,300,000 shares purchased by us in the open market at a value of $16.50 per share, we will have an investment of $114 million in ASARCO, representing 5,300,000 shares of 17% of the total common outstanding.

2. For a period of years, Bendix agrees not to own more than 21% of the outstanding common shares of ASARCO.

3. Bendix will hold two seats on the Board of Directors of ASARCO. Mr. Agee and one other person to be designated would represent Bendix.

4. ASARCO will have the right of first refusal in the event that Bendix intends to dispose of its share holdings in the amount of 1 million or more shares.

It is our intention sometime in the reasonably near future to increase our holdings from 17% to over 20%, but not more than 21%, of the ASARCO shares outstanding. For our planning purposes, we assume that such shares can be purchased in the open market at an average price of $23 per share. The cost of this 3%, representing 850,000 shares, would be $20 million. When added to the $92 million to be paid ASARCO and the 4.9% already owned, our total investment would rise from $114 million to $134 million.

A definitive contract would be signed immediately upon approval of the respective Boards. The ASARCO Board is expected to approve the arrangement by April 14.

Financial Outlook

As earlier noted, under present accounting rules, we would follow the "historical accounting" method until we reach the 20% ownership level, absent management agreements or other evidence of our ability to influence the management of ASARCO. Under the "historical" rules, we would carry our investment on the balance

sheet at our cost and reflect only the dividends received from ASARCO in income. At the present $.40 rate, the dividends would fall short of the debt service under the 100% debt assumption by $2.7 million. A return by ASARCO to the $.80 dividend rate paid in early 1977, would offset the majority of this shortfall.

With a 20% ownership, we, in all probability, would begin to account for our investment under the so-called equity method. Under this method, Bendix income reflects its share of the income of ASARCO and also amortizes so-called "negative goodwill" of about $2 million per year. Under the 100% debt financing assumption, earnings per share would be diluted about 9¢ per share if ASARCO were to break even on an operating basis, and would be enhanced by about 33¢ if ASARCO were to earn around $50 million. We break even from an earnings per share standpoint if ASARCO earns around $15 million of after tax earnings, which it has exceeded in four of the last five years.

As we have discussed at various times in the past, our overriding financial objectives in considering any acquisition are the maintenance of our debt ratio in the 35% range and, at the same time, leave ourselves with reasonable flexibility for the future.

Since the 100% debt assumption indicates a debt ratio in the upper limits of our 35% target range, we have included a couple of additional sets of calculations, one assuming $50 million if cash were freed upon from divestment of existing operations and the other assuming a $70 million issuance of preferred stock.

The $50 million divestment alternative clearly indicates the attractiveness on earnings, cash flow, and debt ratio

of reallocating some of our resources through liquidation or divestments. We have selected \$50 million in divestments as only representative and clearly within our reach. This is particularly true if the Ducellier transaction is finalized, since it alone represents over half of the target amount. Other candidates presently under study would generate the balance or more.

Another way to assure our staying within the 65/35 debt ratio is through the issuance of preferred shares. The attached schedule shows the significant dilution of earnings of an 8-1/2% dividend coupon as compared with the 100% debt alternative. On the other hand, compared to other means of equity financing, preferred stock does lock in equity at a constant cost. Of course, the rising earnings of ASARCO are expected to provide increasing income contributions over time.

While the attachments include preferred stock financing as a back-up alternative to a divestment program, it is our present strategy that the divestment program be pursued vigorously and that the preferred stock or other equity financing be reserved for future transactions.

While we would utilize short-term bridge loans to provide initial financing for this transaction, we would expect to arrange suitable long-term debt or equity financing in the future.

(Attached schedules omitted in printing)

EXHIBIT D-19 TO THE TRANSCRIPT OF THE DEPOSITION OF WILLIAM AGEE DATED AUGUST 21, 1986

1ST STORY of Level 1 printed in FULL format.

April 25, 1982, Sunday, Late City Final Edition

SECTION: Section 3; Page 2, Column 3; Financial Desk

LENGTH: 1165 words

HEADLINE: HOW COMPANIES SHOULD USE THEIR CASH

BYLINE: By William M. Agee

BODY:

Being "cash-rich" is sometimes considered a negative for a business, somehow suggesting that management does not know how to put the money to work. A pile of cash, it is said, may make one vulnerable to a takeover; at the very least, a hoard may look unbusinesslike.

People often assume that the ability to do well in operations is the antithesis of working successfully with money. I believe that the contrary is true.

Business managers, typically and understandably, have functioned within conventional rules. They have sought to do the job better that [sic] they have always

done, i.e., run their basic businesses well, maintain market share, meet production goals, invest in new product development. These are all fairly standard criteria that shareholders expect from management. And in many cases this is still a prudent strategy.

Thus, what I am about to say does not apply to every situation, but it is my belief that today and in the years ahead, business leaders need to develop an additional dimension to their traditional approach to management.

Events and experience are teaching us that it is not only possible, but highly desirable for the managers of major corporations to perform well in the financial arena, as well as basic corporate operations. Skills in each need not conflict. They can ben [sic] counterbalancing and provide dimension and flexibility to management.

In the future, most managers must have the skills to run a portfolio of assets whether they be cash, securities or investments in companies.

An emphasis on financial flexibility is a sharp change from past attitudes, but in many cases it is likely to be the best way to make the most of shareholders' value over time, while adding to the vitality of the United States economy.

Successful financial strategies in the 1980's, I believe, will often involve owning minority positions in other companies. Taking a minority position represents a half-way house between holding cash or marketable securities, and buying 100 percent of a business. With a minority interest, management can make more money for its stockholders in the short term, enhancing for the long

term a company's financial strength. A company with a minority position possesses an ease of exit greater than those who buy 100 percent. Thus, its financial flexibility is far greater, and it is not caught in the unprofitable position of overpaying for its purchases.

In most 100-percent acquisitions, even in the currently depressed stock market, the final purchase price is generally well above what could be called retail prices. This "retail-plus" situation comes about because there is usually a bidding contest, or a takeover battle, that can dramatically run up the price. Such a premium is advantageous for the original shareholders, and often the arbitragers, but it reduces the net value to the acquirer.

These price wars have taken place at a time when most companies on the stock exchange are commanding only "wholesale" values, or even less—what one could call "wholesale-minus." Bargains literally abound.

Is it not a paradox, therefore, that today if you want to own 100 percent of a company you have to pay above the retail price, but if you want to take a minority position, you can get if [sic] for under wholesale? An intelligent strategy should take advatage [sic] of this situation, and managers should be prepared to adapt their strategies to such developments as they occur.

A company that is in the fortunate position of having excess cash, or excess borrowing capacity, at a time when its basic businesses are wellfunded—and which do not want to commit additional financial resources to them—has several options.

These include investing in marketable securities or short-term Government debt, buying back its own stock,

buying 100 percent of another business, or purchasing blocks of stock in other companies.

I believe that executives who find themselves in this enviable position shoud [sic] consider all these options. They should not back away from taking a portfolio position because it is against tradition, because it is not a "comfortable fit" or because Wall Street may not like it. In fact, managers have a responsibility to their shareholders to consider, among other things, the retail-plus, wholesale-minus paradox.

At Bendix, we have found this approach to be very useful. When we wanted to sell our interest in Asarco, our forest products line and other smaller businesses, questions were raised as to what we would do with all that money—some $700 million in cash. We believe that there is a time to sell and a time to buy, and while the two strategies might not always coincide, management should have the strength of conviction not to feel uncomfortable under those circumstances.

With that cash at our disposal, the timing of a purchase is ours. In the meantime, we have managed those funds prudently in the best interests of our stockholders.

This kind of financial flexibility is part of a four-faceted investment program for Bendix. The others are interests in new ventures that can open technological windows of opportunity for us; extensions of existing business that can improve our market position, increase our competitive effectiveness and expand long-range potential, and entry into major businesses that can provide additional dimensions to the company.

At a time when the world is changing so rapidly and the uncertainties are greater than at any time in the life of active executives, among a company's greatest assets are financial strengths, financial flexibility—and the management mentality to move into opportunities that exist outside the traditional framework.

I should emphasize that before embarking on this strategy, management must be fully funding its own programs that have the highest returns and the best growth prospects. It must never starve them. But as it does set about executing this strategy, management will force itself to be more tough-minded about allocation of capital to existing operations.

This strategy appears to be particularly timely right now, when most businesses have excess capacity and are nervous about their ability to earn a fair return on their existing businesses in the near term. It forces decisions upon them to manage their pools of assets for stockholders in ways that prepare soundly for a future that is more uncertain and less ebullient.

So the time is right for consideration of creative investment policies, including some that have been considered nonbusinesslike in the past.

GRAPHIC: Illustrations: drawing

SUBJECT: EXECUTIVES AND MANAGEMENT; CORPORATIONS; FINANCES; INVESTMENT STRATEGIES

Tax Court of New Jersey

Docket No. 14-24-0504-84-CB

(Caption omitted in printing)

Affidavit of
Harbir Singh

HARBIR SINGH, of full age, being duly sworn according to law, upon his oath, deposes and says:

1. My name is Harbir Singh. I make this affidavit for use by the State of New Jersey in connection with the above-captioned litigation.

2. The opinions expressed in my report dated January 7, 1987, which is attached hereto are my best professional judgment and are based upon my review of the materials listed in my report, my professional experience in the area of corporate strategy and corporate acquisitions, and upon accepted principles of strategic management.

3. A copy of my *curriculum vitae* is attached to my report.

/s / Harbir Singh
Harbir Singh

(Certification of Notary Public, dated June 19, 1987 omitted in printing)

BENDIX CORPORATION v. DIRECTOR, DIVISION OF TAXATION

STATEMENT OF PROFESSOR HARBIR SINGH

My name is Harbir Singh. I am Assistant Professor or [sic] Management at the Wharton School of Business of the University of Pennsylvania. I have a Ph.D. in Management from the Graduate School of Business of the University of Michigan. My area of professional specialty lies in the area of corporate strategy and corporate acquisitions. I teach principles of strategic management both to graduate student degree candidates and to middle and senior management interns at the Wharton School. A copy of my *curriculum vitae* is attached to this statement.

I have been asked by the Division of Law of the Department of Law and Public Safety of the State of New Jersey to give my professional opinion on the question of whether the acquisition by the Bendix Corporation of a minority interest in ASARCO, the holding of that interest and the subsequent disposition of the interest by Bendix, should be regarded as an investment having no relationship to the central corporate strategy and operations of the Bendix Corporation.

For this purpose, I was asked to examine, and have examined, the following documents:

1) Memorandum dated April 12, 1978, from W.M. Agee to Bendix Board of Directors included in the minutes of the meeting of the Board of Directors of Bendix Corporation, dated April 13, 1978.

2) Memorandum from W.M. Agee to members of the Long Range Planning Committee—Bendix Corporation, dated March 31, 1978.

3) Deposition of W.M. Agee, August 21, 1986.

4) Court decision in *ASARCO Inc. v. Idaho State Tax Commission*, June 29, 1982.

5) Article by W.M. Agee in the *New York Times*, April 25, 1982, entitled "How Companies Should Use Their Cash."

6) Court decision in *Silent Hoist & Crane Company, Inc. v. Director, Division of Taxation*, June 26, 1985.

On the basis of these documents, and in terms of widely accepted principles of strategic management, my conclusion is that the acquisition of a minority interest in ASARCO was an integral part of the strategic plan of the Bendix Corporation at the time of acquisition, that the minority interest continued to be evaluated subsequently as an integral part of the constituent business of what was then the Bendix Corporation and that the disposition of that interest was part of a general restructuring of the Bendix Corporation and thus an integral part of the corporation's strategic plan. In what follows, I have outlined the basis for this conclusion.

Accepted principles of strategic management, as taught in many major graduate schools of business and management, indicate that it is the responsibility of modern management to oversee the development of a coherent corporate-wide strategic plan, with a long-range (5-10 year) horizon to evaluate performance in existing

markets and to determine new markets for possible investment by the corporation.

In that planning process, top management will determine the markets and businesses in which the corporation will participate and the level of capital investment necessary to compete effectively in each of the individual markets selected.[1] The fundamental objective of top management is seen as the maximization of stockholder returns on their investment in the corporation.[2] Accordingly, effective competition by the corporation in its markets is calibrated in terms of the returns of its investment in each such market.[3]

The role of the corporation's top management necessarily involves, therefore, continuous identification of investment opportunities through which the corporation can earn returns for its stockholders. Those investment opportunities can take the form of new start-up ventures, acquisitions, joint ventures or minority stock interests in other corporations.

The logic underlying this range of possible modes of maximizing stockholder returns is that the firm will obtain returns from a portfolio of its investments, some involving full operating control of the productive assets (acquisitions and internal ventures), and others involving partial ownership of the productive assets (joint ventures and minority investments). In the latter category, returns for stockholders may be obtained through the corporation's share of the earnings of that business during the period the corporation owns the stock position and through capital gains obtained when its stake in the operating business is sold. The goal of maximizing stockholder returns is evident in the memorandum of W.M. Agee dated March 31, 1978, to the

long-range planning committee of Bendix's Board of Directors, in which Mr. Agee proposes the acquisition of an interest in a mining company and focuses on two candidates, one of which ("Blackie") was ASARCO. The argument made was two-fold. Mr. Agee saw acquisitions as the vehicle for realizing Bendix's growth objectives, and some sectors of basis resource industries (copper mining in particular) were undervalued assets in the capital markets. The memorandum clearly appears to be part of a well-articulated strategic plan, with clearly stated growth objectives and clear arguments for the choice of new investment opportunities for maximizing stockholder returns.

Another reason for the ASARCO investment was suggested by Mr. Agee in his deposition and in his article in the *New York Times*. At the time of the ASARCO investment, Bendix's basic operations were well-funded and the company had excess capital available. The ASARCO investment represented a way of strengthening the company financially and of maximizing shareholder value (Agee deposition, pp. 59-60). The consistency of this statement with the established principles of strategic management to which I referred earlier is striking.

The further analysis in Mr. Agee's March 31, 1978 memorandum concerning areas for acquisitions and the focus on two alternative acquisition candidates in the mining industry—examining the principal strategic resources of each candidate and comparing with a carefully selected list of desired attributes of an ideal candidate—indicates meticulous care in the development of the corporation's acquisition strategy. The eventual decision to obtain a minority position in ASARCO as against a controlling interest rested upon the assessment of ASARCO's response to a takeover bid, upon the extent

of investment necessary to make a controlling acquisition, upon the ability with a minority position to learn more about the industry before risking a greater financial commitment and upon the capability of making other acquisitions at the same time. Having determined that a key resource generating high future returns was the quality and commitment of ASARCO's current management, Bendix decided to opt for a minority position in ASARCO along with representation on the ASARCO Board.

The relationship between the acquisition of a minority interest in ASARCO and Bendix's other operations is also made clear in the memorandum of W.M. Agee of April 12, 1978 to the Bendix Board of Directors (attached to an excerpt from the Board's minutes of April 13, 1978). This analysis is again well-articulated and remarkably consistent with accepted normative views on the role of top management in the publicly-held corporation. It also indicates clearly the trade-off among alternative courses of investment action, and the integral nature of the corporate decision-making process.

The role of the ASARCO investment in the corporate strategy of the Bendix Corporation is also clear from the circumstances surrounding the sale of Bendix's interest in that firm. Mr. Agee's published article in the *New York Times* and Mr. Agee's deposition suggest that Bendix's minority interest in ASARCO was sold along with other noncore Bendix businesses as part of a major corporate restructuring, the goal of which was to focus the corporation more heavily on high technology businesses (Agee deposition, pp. 77-79). Among the noncore businesses which were sold at the time were Bendix's two investments in natural resources—the forest

products business and the mining business—specifically Bendix's minority interest in ASARCO. (Agee deposition, pp. 41-42, 78-79). The various sales, including Bendix's minority interest in ASARCO, generated some $700 million in cash. The sales created both excess cash and debt capacity thus enabling Bendix to make a tender offer for its largest acquisition to date. The target was Martin Marietta Corporation, which was very complementary to Bendix in the aerospace part of Bendix's business. (Agee deposition, pp. 79-80; 99-101). Pending application of the $700 million in cash, a portion of this amount was placed with Lehman Brothers in a highly liquid money market account. (Agee deposition pp. 81-84). The funds in the account were available on short notice to implement an acquisition (Agee deposition, p. 84).

As I stated earlier, one of the roles of top management is identification of the business and markets in which the corporation will participate and selection of investment opportunities through which the corporation can earn returns for its stockholders. Mr. Agee's deposition makes clear that he performed this function as chairman of Bendix. It was Mr. Agee's decision to buy an interest in ASARCO and to sell the interest. (Agee deposition, pp. 36, 39). Mr. Agee also made the decision to sell United Geophysical Corporation and to attempt to buy the stock of Martin Marietta Corporation (Agee deposition, pp. 37, 39). In fact, while he was chairman, Mr. Agee approved all of Bendix's acquisitions. (Agee deposition, p. 27). It is simply not possible to regard each of Bendix's investments, carried out as part of the strategic plan of a single corporate entity and conceived and considered by a single decision-making managerial body, as independent activities.

As I indicated earlier, my reading of the documents listed at the beginning of this statement, together with my professional understanding of the principles of strategic management as applied to these circumstances and as communicated to students and management practitioners, leads to my conclusion that there is no doubt the acquisition by the Bendix Corporation of a minority interest in ASARCO, and its subsequent holding and disposition, are properly viewed as an integral part of the strategic management of the overall resources of the Bendix Corporation.

/s/ Harbir Singh
Harbir Singh

DATED: January 7, 1987

Footnotes

1. Andrews, K.R., *"The Concept of Corporate Strategy,"* Homewood, Illinois, Dow Jones-Irving, 1971.

2. Salter, M.S. and W. Weinhold, "Diversification via Acquisition: Creating Value," pp. 166-176, *Harvard Business Review,* July-August, 1978.

3. Ellsworth, R.R. "Subordinate Financial Policy to Corporate Strategy," *Harvard Business Review,* pp. 170-182, November-December, 1983.

HARBIR SINGH

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Professional Appointments

Fall, 1983-present	Lecturer (1983-84) Assistant Professor (1984 onward) Management Department The Wharton School University of Pennsylvania Philadelphia, PA 19104
Spring, 1980- January, 1984	Research Assistant and Doctoral Student Department of Policy and Control Graduate School of Business University of Michigan Ann Arbor, MI 48109

Professional Associations

Editorial Board Member, *Academy of Management Journal*

Reviewer, *Strategic Management Journal*

Member of the Academy of Management, the Institute of Management Science and the Strategic Management Society

Professional Honors

Award for Outstanding Research in Strategic Management, Academy of Management and Strategic Management Society, 1985.

Education

Ph. D.	Graduate School of Business University of Michigan Ann Arbor MI 48109.
M.B.A.	Indian Institute of Management Vastrapur, Ahmedabad-38105.
B. Tech	Indian Institute of Technology New Delhi-110017.

Publications and Working Papers

"Diversification Strategy and Systematic Risk", (With C.A. Montgomery), *Strategic Management Journal,* June, 1984.

"Corporate Acquisitions, Diversification Strategy and Economic Performance", (With C.A. Montgomery) Reginald Jones Center Working Paper Series, (under second review, *Strategic Management Journal).*

"Product Market Relationships and Competition for Corporate Control", Management Department Working Paper No. 508, 1985 will be submitted to *Management Science.*

"Corporate Strategy and the Role of Acquisitions", (With P. Lorange and E. Kotlarchuk) in *Mergers and Acquisitions Handbook,* by Milton Rock, ed, McGraw-Hill, Forthcoming, August, 1986.

"Entering the United States by Acquisition or Joint Venture: Country Patterns and Cultural Characteristics", with Bruce Kogut, Reginald Jones Center Working Paper Series, will be submitted to *Journal of International Business Studies.*

"Strategic and Financial Planning: Towards an Integration", (With B.S. Chakravarthy) forthcoming in *Latest Advances in Strategic Management,* P. Shrivastava and R. Lamb, eds, 1986.

Corporate Acquisitions: Redefining the Scope of the Firm, University of Pennsylvania Press (under final negotiation) Spring, 1987.

"Why He Left: an Explanation For the Succession Effect", with Stewart Friedman, January, 1986, submitted for the Academy of Management Meetings, August, 1986 (project funded by the Reginald Jones Center, The Wharton School).

Papers Presented and Work in Progress

"The Effect of Raiders on Corporate Acquisition Activity", in progress, expected completion June, 1986.

"The Effects of Golden Parachutes on Contested Takeovers", in progress, expected completion by June, 1986.

"Foreign Entry Strategies: Acquisition, Joint Venture or Internal Development?", with B. Kogut, funded by the Reginald Jones Center, expected completion by August, 1986.

"Cooperative Ventures: Theory and Evidence" with B. Kogut presented at TIMS/ORSA Meetings in Boston, May, 1985.

"Product Market Relationships, Acquisitions, and Competition for Corporate Control", Presented at the TIMS/ORSA meetings, November, 1984.

"Corporate Acquisitions, Diversification Strategy and Performance", presented at the Academy of Management Meetings, August, 1984.

"Strategic and Financial Planning: The Twain Shall Meet", presented with B.S. Chakravarthy at the TIMS/ORSA Meetings at Copenhagen, June, 1984.

Doctoral Advising

Member of two Dissertation Committees—one in Management and the other in Decision Sciences. The Management dissertation relates to the organizational integration of corporate acquisitions and is being done by Mark Shanley.

Member of the Doctoral Admissions Committee headed by John Kimberly, helped in the entry decisions for 1985-86.

Teaching

Have taught Management One, Corporate Strategy, and Corporate Development. The course on Corporate Development is an MBA elective which has been very favorably received in the MBA program.

Executive Education: Have taught in the Strategic Planning Seminars consistently, and am now also teaching in the Management and Technology Seminar.

Tax Court of New Jersey

Docket No. 14-24-0504-84-CB

(Caption omitted in printing)

STIPULATION OF FACTS

IT IS HEREBY STIPULATED AND AGREED that for purposes of this action, the following statements may be accepted as facts and that all exhibits referred to herein and attached hereto are incorporated in this stipulation and made a part hereof; provided, however, that either party may object to the admission of such facts and exhibits into evidence on the grounds of materiality or relevance and either party may offer other further evidence not inconsistent with this stipulation. The submission of exhibits hereto does not necessarily indicate the agreement of the parties as to the truth of all matters contained in such exhibits. The truth of assertions within such stipulated exhibits may be rebutted or corroborated by additional evidence.

I. INTRODUCTORY MATTERS

1. The tax year at issue in this matter (as a result of the amendment of Bendix Corporation's ("Bendix") complaint) is the twelve month period ending September 30, 1981, and unless otherwise indicated all statements in this stipulation of facts pertain to Bendix's 1981 taxable/fiscal year. Bendix is on a September 30 fiscal year.

2. The amount of corporation business tax ("CBT") in dispute, which is claimed in refund by Bendix, is approximately $1,845,000. Attached hereto as

Exhibit A is a copy of Bendix's 1981 CBT return including portions of its *pro forma* 1981 federal income tax return. Bendix requested the refund sought (although in a greater amount than at issue in this proceeding) on its 1981 CBT return.

3. The tax at issue relates to three items of income which Bendix claims may not constitutionally be included by the Director in the income measure of its CBT liability. These items of income are:

(a) Capital gain in the amount of approximately $211.5 million realized on Bendix's sale of its 20.6% stock interest in Asarco, Inc. ("Asarco");

(b) Capital gain in the amount of approximately $41.9 million realized on Bendix's sale of the stock in its wholly owned subsidiary United Geophysical Corporation ("UGC"); and

(c) Interest earned in an account maintained by Bendix with Lehman Brothers, Kuhn Loeb ("Lehman Brothers") on the proceeds of the sale of Bendix's interests in Asarco and UGC, amounting to a portion of the total of approximately $12.7 million earned in the account in fiscal 1981.

4. Bendix does not dispute that its net worth for 1981 and the balance of its 1981 entire net income are subject to the CBT on an apportioned basis. The actual apportionment factor may, however, be based on a factor as determined through this action if Bendix's alternative claim described in paragraph 6 below is reached.

5. As audited, Bendix's apportionment factor pursuant to *N.J.S.A.* 54:10A-6 was 7.980727%.

6. In the event this Court determines that all or any part of the capital gains and interest income described in paragraph 3 above are properly includable in Bendix's New Jersey apportionable income, Bendix contends, in the alternative, as to any such includable capital gains and interest, that it is entitled to relief under *N.J.S.A.* 54:10A-8 in the form of the inclusion of Asarco's and/or UGC's (as the case may be) receipts, payroll and property in Bendix's 1981 apportionment factor to the extent of Bendix's stock interest in Asarco and/or UGC.

II. THE TAXPAYER

7. Bendix was incorporated in Delaware in 1929 as a manufacturer of aviation and automotive parts.

8. In 1937, Bendix obtained a certificate of authority to transact business in New Jersey and Bendix was qualified to transact business in New Jersey at all times relevant to this action.

9. In 1983 Bendix became a wholly owned subsidiary of Allied Corporation ("Allied") and was merged into Allied as of April 1, 1985.

10. At all times relevant to this action, Bendix's corporate headquarters and commercial domicile were in Southfield, Michigan.

11. Over the years, Bendix developed into a multinational corporation with activities, either directly or through subsidiaries or other operating units, in all 50 states and 22 foreign countries. Bendix's core

businesses expanded along several basic lines so that beginning in 1970 (when the forest products business was acquired) until 1981 (when the forest products business was sold) there were 4 major Bendix operating groups or sectors (the "Major Groups"): (a) automotive, (b) aerospace/electronics, (c) industrial/energy and (d) forest products. The various Bendix subsidiaries or other operating units were, for operational purposes, included by Bendix in one of the Major Groups based upon the type of business activity engaged in by that subsidiary or operating unit. Each subsidiary or operating unit had its own management which, in turn, reported to the chief executive of the Major Group in which the subsidiary or operating unit was included. The chief executives of the Major Groups reported directly to the chairman and chief executive officer of Bendix.

12. In fiscal 1981 Bendix had about 72,600 employees with 46,700 in the United States and 25,900 in Europe and other foreign locations. For fiscal 1981, revenues were $4,425,400,000, of which $3,117,600,000 derived from United States operations. Of these 1981 revenues, $2,176,500,000 derived from the Automotive Group, $1,468,700,000 derived from the Aerospace-Electronics Group and $784,900,000 derived from the Industrial Group. Miscellaneous income and intercompany eliminations reduced revenues by $4,700,000.

13. The principal products manufactured by Bendix during 1981 are described in Bendix's 1981 annual report attached as Exhibit B. The business of Bendix Forest Products Corp. ("BFPC"), which comprised the bulk of the Bendix forest products business, is described in an excerpt from Bendix's 1979 annual report attached as Exhibit C.

14. At all times relevant to this action, Bendix was under the supervision of a 17 member board of directors.

15. At all times relevant to this action, the chief executive officer of Bendix was called the chairman. Between 1965 and 1972, A.P. Fontaine was chairman. From 1972 to 1976, W. Michael Blumenthal was chairman. From January 1977 to June 1983, W.M. Agee was chairman.

16. At all times relevant to this action, the chairman was a member of the Bendix Board of Directors.

17. During the tenure of Mr. Agee as chairman, the officers of Bendix reporting directly to the chairman were the chief administrative officer, chief financial officer, head of the planning department/corporate development, and the presidents or chief executives of the Major Groups.

18. During Mr. Agee's chairmanship, there was an advisory group made up of senior management that met periodically. From 1980 onward, the group (which was designated the "chairman's council") included the president of each Major Group, the chief financial officer, chief technical officer, Bendix's general counsel, and the vice-president of corporate organization and human resources, who in that capacity was also head of Bendix's planning department. The purpose of the group was to assist in policy making. The group functioned in an advisory capacity; it did not have decisionmaking powers. Prior to 1980, commencing in 1977 and before the formal creation of a chairman's council, there was a chairman's advisory committee consisting of senior

Bendix management including the president of each Major Group, the chief financial officer, the head of the planning department and the chief administrative officer.

19. Reporting to the Chief Financial Officer of Bendix was the controller. The Bendix controller was the financial contact between the corporate headquarters in Southfield, Michigan and Bendix offices and operations throughout the United States and elsewhere. The controller had frequent contact with the Bendix chairman.

20. The controller's office was responsible for taxes, financial analysis, public reporting and internal reporting and accounting.

21. There was a controller's council, which consisted of the controller and his direct staff and the chief financial officers of the Major Groups. The controller's council generally met monthly to discuss subjects of interest to the controller and the financial officers.

22. During the course of each year that Mr. Agee was chairman, there were periodic budget reviews, operating reviews and strategic plan reviews.

23. In addition, during the course of each year that Mr. Agee was chairman, there were monthly operating group meetings which were attended by all the Major Group presidents and the controller. The meetings were for the purpose of exchanging information on various topics. There were also frequent reviews of Bendix operations throughout the United States and elsewhere.

24. Beginning in the late 1970's, Bendix began an annual process of preparing company-wide five year strategic plans. As part of this effort, each Major Group and each subsidiary or other operating unit within the Major Groups also prepared annual five-year strategic plans. Each such plan, whether for Bendix, a Major Group or a subsidiary or other operating unit, generally described the business outlook for the particular entity involved, reviewed the competitive position in its markets, described operating objectives and strategies, surveyed principal products and customers, described key issues or problems, provided financial data and analysis, discussed growth opportunities and, in some cases, discussed acquisition and divestiture possibilities.

25. Each subsidiary's or other operating unit's plan was reviewed at the Major Group level and, if approved, was ultimately, to some degree, incorporated and compiled into a strategic plan for the Major Group. Each Major Group's plan was then reviewed by the Bendix planning department and, following planning department review, would be presented to Mr. Agee and others selected to review it. Generally, there would be a meeting between personnel from the Major Group and the Agee reviewing group. Subject to that group's review and approval, portions of each Major Group's plan would be incorporated into the overall Bendix strategic plan for that year.

26. As described, the strategic plans fulfilled several general functions: the plans were attempts to identify future business prospects, problems and concerns relating to each entity for which a plan was prepared and they often contained proposals for addressing those business prospects, problems and concerns. To the extent approval of action of some type

was sought through the plan, after review and meetings between the members of the operating group which prepared the report and other analyses, the action sought was either approved and acted upon or approval was withheld.

27. In addition to reviewing the strategic plans of the various operating units and Major Groups, the Bendix planning department (which was located in Southfield, Michigan and performed all its functions in that location) considered, analyzed and developed long and short range business proposals for the various Bendix groups. Consistent with this objective, the planning department would analyze trends in the types of businesses Bendix was engaged in and ways to respond to those trends such as (i) increasing or decreasing capital commitment to particular products or services, (ii) greater or lesser expenditures by Bendix on research and development as to particular products or services, (iii) offering new or discontinuing (by divestiture of subsidiaries or other operating units or otherwise) existing Bendix products or services, or (iv) entry into a new product or service area either by developing the new product or service from within or by acquiring the assets, employees or technology for that new product or service through acquisition. The Bendix planning department, as the need arose, also evaluated acquisition candidates. While acquisition or divestiture was not the sole means of accomplishing certain of the above-mentioned objectives, Bendix, as many other major corporations, engaged in selected acquisitions and divestitures of companies or assets over the years.

28. As described by A. Matthew Lord, Director of Corporate Development in the Bendix planning department, during his tenure in the planning

department (1975-1982) Bendix had three major strategies for growth: (1) exploit its existing businesses, (2) move into related areas, and (3) move into unrelated areas with strong growth potential.

29. According to Mr. Lord, the long term goals for the Major Groups were:

> *Aerospace:* Move up on the scale to producing systems and subsystems rather than products and components.
>
> *Automotive:* Offer more products, particularly in the after market, which is more profitable than the original entry market.
>
> *Forest Products:* Integrate forward and avoid the cyclical problems of the market.
>
> *Industrial:* Look for good growth potential and similar returns in different segments of the market.

30. As part of a shift in strategy which began in 1980 (see ¶¶ 154, 155 hereafter), the Bendix planning department's function included two additional endeavors. The first of these involved the formation of a technical ventures group, which evaluated and recommended certain relatively modest acquisitions in high technology businesses. The acquisition of 20% of Maxwell Laboratories, Inc. for less than $50 million and of E-O Tech were part of the technical ventures program. Not including Maxwell, the total dollar value of the acquisitions in the technical ventures program did not exceed $20 million. The second endeavor was a screening program to select a major acquisition candidate in a high technology business. Over a period of nearly two years,

numerous companies were evaluated. One of the companies so evaluated was Martin Marietta Corporation ("Martin Marietta"). The Bendix planning group eventually recommended that Bendix consider the acquisition of Martin Marietta.

III. BENDIX IN NEW JERSEY

31. At all times relevant to this action, Bendix's New Jersey activities consisted primarily of the operation of several Bendix units in the Aerospace Group at Teterboro, New Jersey, including Aerospace Flight Systems, Guidance Systems and Test Systems and the manufacture of electric power generating systems at a plant in Eatontown, New Jersey.

32. The Bendix Aerospace Flight Systems Division in Teterboro developed and manufactured flight control systems, cockpit displays, flight and engine instrumentation, air data computers, engine control systems, air inlet control systems, pressure and position sensors and transducers, and weapon release and control systems. In addition, supporting maintenance and customer service were provided for all of the manufactured products. This division performed its own research, engineering, marketing, accounting and computer services necessary to support its basic manufacturing operations.

33. The Bendix Guidance Systems Division in Teterboro developed and manufactured inertial guidance equipment, gyroscopic devices, stabilization and control systems for space programs, and specialized missile and drone equipment. This division performed its own research, engineering, marketing, accounting and

computer services necessary to support its basic manufacturing operations.

34. The Bendix Test Systems Division in Teterboro developed and manufactured complete support systems for analog, digital, microwave and other devices, including the evaluation of test requirements, design and fabrication of test hardware and software, validation of test hardware compatibility, system configuration management, and logistic support of test systems. Test experience and hardware was available for, among other systems, air inlet control systems, armament control systems, automatic flight control systems, communications systems, display systems, navigation systems, and radar systems. This division performed its own research, engineering, marketing, accounting and computer services necessary to support its basic manufacturing operations.

35. At all time [sic] relevant to this action, other Bendix Aerospace activities in New Jersey included Bendix Computer Aided Engineering in Teterboro, which supported the computer aided engineering requirements of all Bendix aerospace businesses worldwide, and a small Bendix Avionics Division service facility in Morristown, New Jersey, which serviced and supported general aviation customers in central New Jersey.

36. The Bendix Electric Power Division in Eatontown developed and manufactured complete electric power generating and control systems, featuring brushless AC and DC generators, solid-state control and static power conversion equipment, power control and load sensing components, electric starting systems, electric system test and checkout systems, and other related electric power system components. This division

performed its own research, engineering, marketing, accounting and computer services necessary to support its basic manufacturing operations.

37. In addition to the foregoing New Jersey activities of Bendix's aerospace and electric power groups, at all times relevant to this action, Bendix Field Engineering Corporation, a wholly-owned subsidiary of Bendix, conducted two operations in New Jersey: (i) its Marine Science Services Division in Teterboro provided information to the worldwide ocean going shipping industry, including ocean current and weather information, and (ii) pursuant to a contract with the Federal Environmental Protection Agency ("EPA"), facilities management and maintenance support services were provided at an EPA facility in Edison, New Jersey.

38. At all times relevant to this action, Bendix also sold, both on a wholesale and retail basis, its full range of products to New Jersey customers and stored inventory in New Jersey at locations owned by others.

38a. The foregoing paragraphs 31 through 38 describe all the Bendix activities conducted in New Jersey at all times relevant to this action.

IV. ASARCO

39. Asarco (formerly known as American Smelting and Refining Co.,) was (and continues to be) a New Jersey corporation with its principal offices in New York, New York. At all times relevant to this action, Asarco was one of the world's leading producers of nonferrous metals, principally copper, lead, zinc and silver and nonmetallic minerals, including asbestos, coal, ilmenite and limestone. In addition to mining and

treating ore from its own mines, Asarco at all times relevant to this action was a major custom smelter and refiner of nonferrous metal ores mined by others. Asarco at all times relevant to this action conducted its own operations in the United States, Canada, Peru, and Bolivia, and also had substantial investments in other mining and metals companies through which mining operations were conducted in Australia, Mexico, Nicaragua, Peru and other foreign countries. These included M.I.M. Holdings Limited of Australia (48.9% owned), Mexico Desarrollo Industrial Minero, S.A. (34% owned), Neptune Mining Company (52.2% owned), Southern Peru Copper Corporation (52.3% owned), and Revere Copper and Brass Incorporated (33% owned).

40. At all times relevant to this matter, Asarco's sole activities (either directly or through subsidiaries) in New Jersey were the ownership of an ilmenite mine in Manchester, New Jersey, manufacturing by a subsidiary of additives, hardeners and other metal products at Newark and Trenton, New Jersey, manufacturing by a subsidiary of bronze rods, tubes, bearings, bushings and parts at Somerville, New Jersey, the rental of a management information service center in Cranford, New Jersey, the sale of its metal products to New Jersey customers and storage of inventory of such metal products at New Jersey locations owned by others. Asarco paid New Jersey corporation business tax with respect to these properties and income.

41. Prior to and after its investment in Asarco, no business or activity of Bendix (in New Jersey or otherwise), either directly or indirectly (other than the investment itself), was involved in the nonferrous metal production business or any other business or activity (in New Jersey or otherwise) in which Asarco was involved.

On its part, Asarco had no business or activity (in New Jersey or otherwise) which, directly or indirectly, was involved in any of the businesses or activities (in New Jersey or otherwise) in which Bendix was involved. None of Asarco's activities, businesses or income (in New Jersey or otherwise) were related to or connected with Bendix's activities, business or income (in New Jersey or otherwise).

42. Prior to the decision to invest in Asarco, the Bendix planning department conducted studies of both natural resource companies and the non-ferrous metals industry. A copy of an executive summary of natural resource companies is attached as Exhibit D.

43. Bendix began buying shares of stock in Asarco on the open market in December 1977 and completed its acquisition of 20.6% of Asarco's stock in November, 1978.

44. The reasons for Bendix's interest in a natural resource company are set forth in a memorandum of March 31, 1978 from W.M. Agee to the Long Range Planning Committee of Bendix's Board of Directors entitled "Long Range Growth and Acquisition Planning," a copy of which is attached as Exhibit E. The memorandum was authored by Jerome Jacobsen, head of Bendix's planning department, with review and input from Mr. Agee.

45. The March 31, 1978 memorandum discusses the areas of Bendix's business which have potential for growth and sets forth strategies for growth in three of those areas. The memorandum also focuses on the possible acquisition of a nonferrous metals company and in particular Asarco (called "Blackie" in the

memorandum), and provides reasons for acquiring approximately 20% of Asarco's stock. Attached to the memorandum are various supporting documents dealing primarily with the mining industry.

46. The Long Range Planning Committee of the Bendix Board of Directors recommended that the full Board of Directors approve the acquisition by Bendix of approximately 20% of the stock of Asarco.

47. The Board of Directors of Bendix met on April 13, 1978 and was presented with a memorandum dated April 12, 1978 from Mr. Agee requesting approval to purchase 15.1% of the stock of Asarco (4.9% having been previously acquired). A copy of an excerpt from the Bendix Board minutes of April 13, 1978, together with a copy of the memorandum of April 12, 1978 are attached as Exhibit F.

48. In addition to summarizing management's view that Bendix should acquire an interest in a company involved in basic commodities, particularly copper, the memorandum summarized Asarco's attributes, focused on the perceived unique aspects of the Asarco investment, outlined the broad parameters of the transaction, and set forth certain financial aspects of the investment.

49. Following presentation of the April 12, 1978 memorandum, the Bendix Board of Directors approved by resolution the acquisition of up to 21% of the stock of Asarco. A copy of the resolution is attached as Exhibit G.

50. Pursuant to a Stock Purchase Agreement dated as of April 13, 1978 (the "Agreement"), Asarco agreed to sell to Bendix 3,800,000 shares of Asarco stock.

A copy of the Agreement is attached as Exhibit H. Under the terms of the Agreement, Bendix agreed that prior to January 1, 1985 it would not either directly or through subsidiaries and affiliates hold in the aggregate more than 21% of the voting stock of Asarco. Further, Bendix agreed that in the event prior to January 1, 1985 it desired to sell 1,000,000 or more shares of its Asarco stock, it would provide to Asarco a right of first refusal at a price and on terms set forth in the Agreement. Additionally, Bendix agreed that prior to January 1, 1985 it would not solicit or permit any of its subsidiaries or affiliates to solicit proxies with respect to its Asarco stock or be, or permit any of its subsidiaries and affiliates to be, a "participant" in any "election contest" relating to election of directors of Asarco (as such terms are used in Rule 14a-11 of Regulation 14A under the Securities Exchange Act of 1934). The Agreement was to be governed by New Jersey law.

51. Through a series of further purchases either under option contracts or in the open market, Bendix acquired additional shares of stock of Asarco so that upon completion of all purchases it eventually owned 20.1% of such stock. Bendix maintained its investment in Asarco at a constant level of 6,106,900 shares which, upon retirement by Asarco of outstanding shares, became equal to 20.6% of Asarco's outstanding stock.

52. The total purchase price paid by Bendix for 20.6% of Asarco's stock was $127,649,017. The purchase price was paid by Bendix in cash, with $110 million of this purchase price being borrowed by Bendix under line of credit arrangements with its bank lenders. The balance of the cash purchase price was derived from internally generated funds.

53. While Bendix held the Asarco stock, Asarco agreed to recommend that two seats on Asarco's fourteen-member Board of Directors be filled by Bendix's representatives. These seats were filled by Mr. Agee and Malcolm Baldridge, a Bendix outside director.

54. Bendix did not exert any control over Asarco.

55. Because Bendix owned at least 20% of Asarco's stock, it was able to account for the investment under the equity method. Under this method, Bendix included in its income the share of Asarco's total earnings equal to Bendix's percentage of Asarco's stock, *i.e.*, 20.6%.

56. In order to report its investment in Asarco on the equity method, every fiscal quarter two or three individuals from Bendix's controller's department would visit Asarco's headquarters in New York and review Asarco's books and, at other times throughout the year, financial materials were supplied by Asarco to Bendix over the telephone or through the mails.

57. The Bendix Board of Directors met approximately five to six times a year. At every Board meeting during the period Bendix held at least 20% of Asarco, there was a report to the Board on Asarco's earnings. Copies of the relevant portions of certain Board minutes and Mr. Agee's reports to the Bendix Board on the Asarco investment at the meetings of October 26, 1978, February 12, 1979, April 26, 1979, June 18, 1979, October 25, 1979, January 31, 1980, April 24, 1980, June 26, 1980 and August 28, 1980 are attached as Exhibit I.

58. Over the years Bendix held its investment in Asarco, the economic outlook for the nonferrous metal industry greatly improved and the trading price of Asarco's stock increased as did its dividend payments.

59. The October 25, 1979 status report on the Asarco investment stated that Asarco contributed 82 cents per share to Bendix's earnings for Bendix's fiscal year ended September 30, 1979. Bendix's total earnings per share for fiscal year 1979 were $7.10.

60. The August 28, 1980 status report estimated that Asarco would contribute $2.22 per share to Bendix's 1980 earnings. Bendix's total earnings per share for fiscal year 1980 were $7.68.

61. With the approval of Bendix's Board, in September 1979, W.M. Agee made a proposal to Asarco's Board of Directors that the two companies consider a merger or other business combination. Asarco's Board did not wish to pursue discussion of any such transaction.

62. During the period that Bendix held its investment in Asarco, Bendix and Asarco were unrelated business enterprises each of whose activities had nothing to do with the other. As examples of this independence:

- There were no common management, officers, or employees of Bendix and Asarco.

- There was no use by Bendix of Asarco's corporate plant, offices or facilities and no use by Asarco of Bendix's corporate plant, offices or facilities.

- There was no rent or lease of any property by Bendix from Asarco and no rent or lease of any property by Asarco from Bendix.

- Bendix and Asarco were each responsible for providing their own legal services, contracting services, tax services, finance services and insurance.

- Bendix and Asarco had separate personnel and hiring policies (Agee) and separate pension and employee benefit plans.

- Bendix did not lend monies to Asarco and Asarco did not lend monies to Bendix.

- There were no joint borrowings by Bendix and Asarco.

- Bendix did not guaranty any of Asarco's debt and Asarco did not guaranty any of Bendix's debt.

- Asarco had no representative on Bendix's Board of Directors.

- Bendix did not pledge its Asarco stock.

- As far as can be determined there were no sales of product by Asarco itself to Bendix or by Bendix to Asarco. There were certain sales of product in the ordinary course of business by Asarco subsidiaries to Bendix but these sales were minute compared to Asarco's total sales of $1.7 billion in 1979 and $1.8 billion in 1980. The amounts of these sales are set forth in

Exhibit J. These open market sales were at arms length prices and did not come about due to the Bendix investment in Asarco.

- There were no transfers of employees between Bendix and Asarco.

63. In the fall of 1980, Bendix publicly announced that it was considering the possibility of selling its stock in Asarco. On October 7, 1980, Mr. Agee reported to the Bendix Board of Directors on his discussions with Asarco concerning the possible sale of Bendix's stock in Asarco to Asarco. While two members of the Bendix planning department testified that they did not conduct studies involving disposition of the Asarco investment, the Board was presented with and discussed materials presented by a managing director of Lehman Brothers concerning a possible sale of Bendix's stock in Asarco. The Bendix Board then authorized Mr. Agee to enter into an agreement to sell all or a portion of the Asarco stock at no less than $53 per share. A copy of an excerpt from the Bendix Board minutes of October 7, 1980 and an excerpt of the materials presented by Lehman Bothers are attached as Exhibit K.

64. Among the reasons for selling Bendix's interest in Asarco were (i) Bendix had decided to reduce its investment in businesses tied to natural resources such as BFPC and Asarco, and (ii) Bendix's investment in Asarco had appreciated considerably.

65. Asarco had a right of first refusal under the Agreement if Bendix desired to sell more than 1,000,000 shares of stock of Asarco. Upon negotiations with Bendix, Asarco agreed to repurchase its stock from Bendix.

66. On October 29, 1980, Bendix and Asarco entered into an agreement under which Asarco agreed to repurchase the shares owned by Bendix at $55 per share. The sale agreement was to be governed by the laws of New Jersey, and the closing was to occur in Morristown, New Jersey, at the offices of counsel of Asarco.

67. In the first half of 1981, Bendix sold its 6,106,900 shares in Asarco back to Asarco at $55 per share for a total sale price of approximately $335,879,500, of which approximately $211,500,000 was the long term capital gain at issue in this matter.

V. UNITED GEOPHYSICAL CORPORATION

68. Unless otherwise specified, the statements pertaining to UGC apply to the period 1965-1981.

69. In 1965, Bendix purchased 100% of the stock of UGC for stock in Bendix valued at approximately $6.2 million. Bendix sold 100% of the stock of UGC in July 1981 to Seiscom Delta, Inc. for cash amounting to approximately $80 million.

70. The purchase by Bendix of UGC was part of an effort by Bendix to diversify. It was also hoped that the business of UGC would complement existing Bendix oceanic endeavors. Bendix's 1965 Annual Report to Shareholders states at page 3:

> We have accelerated our acquisitions program. Here our objective is not merely diversification. We intend to achieve a better balance of our military and commercial-industrial product sales. We intend to enhance and improve our competence in the fields where Bendix's

leadership and talents are acknowledged by acquiring strong units that are supplementary. In May [1965] we acquired the United Geophysical Corporation. This well-established organization is active world-wide in providing geophysical services to oil companies. Complementing our substantial oceanics endeavors, this acquisition will enable us to participate more fully in geophysical operations for petroleum and other minerals on a global basis.

71. UGC was in the business of seismic surveying, which involves the creation of underground acoustical waves through blasting or mechanical means and the recordation and interpretation of the wave patterns for purposes of locating oil and gas. A more detailed description of UGC's business is set forth in a draft prospectus dated June 18, 1981, an excerpt of which is attached as Exhibit L. UGC's principal customers were oil and gas companies.

72. UGC transacted no business in New Jersey.

73. Prior to acquiring UGC, neither Bendix nor any subsidiaries or affiliates were involved in the business of seismic surveying.

73a. No group or unit of Bendix (other than UGC) was engaged in the same business as UGC either in 1965 or at any other time.

74. From 1965 to 1968, UGC was included in Bendix's oceanics group. In 1968, the oceanics group was disbanded. Thereafter for a period of time, UGC was included in Bendix's Industrial/Energy Group, which included in addition to UGC, Texas Pipe Bending Corp.

and Skagit Corp. In later years, the Bendix Aerospace Group had some oversight over UGC.

75. UGC's Board of Directors consisted generally of four or five individuals. UGC had several officers. Attached hereto as Exhibit M is a list showing UGC's directors and officers from May 1965 to December 1972 and from February 1977 to July 1981. The individuals who were simultaneously employees of Bendix are starred (*) and those who had been employed by Bendix prior to becoming employees of UGC are doubled [sic] starred (**). John C. Fontaine (***) was a partner in Hughes, Hubbard and Reed, Bendix's outside counsel. The positions held by these individuals at Bendix are listed on Exhibit N.

76. Certain senior management of UGC were supplied by Bendix. Murray Weingarten was vice-president of operations at Bendix Field Engineering Corporation ("BFEC") when in 1967 he became president of UGC. He replaced UGC's then president, who had been carried over in that position when Bendix acquired UGC.

77. Mr. Weingarten remained at UGC until 1971 when he was made president of Skagit Corp., another Bendix subsidiary.

78. Bendix brought Mr. Weingarten to UGC because Bendix believed that his experience managing BFEC, which, like UGC was a service business (albeit one which provided entirely different services than those provided by UGC), might be helpful in operating UGC and addressing certain of UGC's problems which were resulting in losses.

79. Under Mr. Weingarten, UGC was reorganized. There was a significant reduction in UGC's staff. Individuals were asked to leave because Mr. Weingarten believed that UGC was overstaffed. Fewer people were authorized to enter into agreements on behalf of UGC or otherwise bind UGC. Mr. Weingarten initiated certain new personnel policies at UGC.

80. Mr. Weingarten brought two additional Bendix employees into management positions at UGC—R. M. Marshall, who became controller and assistant secretary of UGC and C. M. Edwards, who became director of engineering at UGC. Other than these management level appointments, there were few transfers of employees between Bendix and UGC. Bendix approved the hiring and salaries of individuals reporting directly to Mr. Weingarten.

81. In approximately 1969, Mr. Weingarten recommended to Bendix that UGC end its involvement in marine exploration, which contributed roughly 90% of UGC's losses. The recommendation was not accepted at the time as Bendix hoped that oceanography (underwater mining) would eventually become profitable.

82. As president of UGC, Mr. Weingarten had telephone contact approximately twice a week with his immediate superior at Bendix and personal contact with that person approximately once or twice a month.

83. For a period beginning in 1973 until Bendix sold its stock in UGC in 1981, W. Grogan Shelor, vice-president and group manager of the Bendix-Aerospace Group, was the person at Bendix to whom the President of UGC reported. When Mr. Shelor was in this role, he

was in contact by telephone with UGC's president approximately every other day, and made personal visits to UGC approximately once a month. During the latter part of the period that Bendix owned UGC, the President of the Bendix Aerospace Group, W.C. Purple, would accompany Mr. Shelor or his successor to UGC at least once a year.

84. Bendix approved UGC's annual financial plan. UGC would submit a proposal; Bendix would comment; if necessary the plan was revised and eventually a UGC financial plan would be accepted. The plan would discuss UGC's business projections and needs, estimate its capital needs, and project its profit goals.

85. Bendix's Board of Directors approved UGC's requests for capital expenditures above a certain dollar limit.

86. UGC provided Bendix with various periodic reports on its activities. These included:

- monthly status reports which described UGC's operations, including the number and location of its seismic crews;
- monthly and annual financial reports;
- quarterly census reports setting forth the number of UGC's employees and their salaries;
- periodic affirmative action reports.

87. UGC provided Bendix with safety and accident reports as needed.

88. There were some management conferences between Bendix and UGC's managment [sic].

89. As was true for other Bendix divisions, affiliates or subsidiaries (except minority investments such as Asarco), in the latter 1970's, UGC submitted annual strategic plans to Bendix. These plans would be reviewed by the Bendix group executive in charge of UGC, discussed with UGC, and either accepted or revised.

90. Bendix's audit staff audited UGC approximately every 18 months. The audit involved sending Bendix employees to UGC's headquarters to review UGC's books and accounting practices.

91. Shortly after Bendix acquired UGC, it financed the construction of two ships for UGC at approximately $1 million each to be used in marine seismic exploration.

92. UGC's employees were eligible to participate in Bendix's Salaried Employees Savings and Stock Ownership Plan and between 600 to 1600 UGC employees actually participated.

93. Bendix guaranteed UGC's workers compensation liability in California where UGC self-insured its liability, and UGC participated in Bendix's workers compensation insurance plans.

94. The Bendix logo appeared on certain UGC equipment, such as the two ships financed by Bendix, and during the latter portion of the period 1965-1981, sometimes on UGC's stationery and memoranda.

95. UGC was included under Bendix's insurance policies, and Bendix insurance personnel gave consultation to UGC on insurance matters.

96. Bendix provided UGC with legal advice when requested and routine legal services such as corporate filings and maintaining of corporate minutes.

97. Bendix provided tax advice to UGC, handled tax audits, and prepared UGC's federal, state and local corporate income and franchise tax returns. UGC prepared its own sales tax, property tax, and foreign tax returns.

98. During the latter part of the period when Bendix owned UGC, UGC's computer was connected via telephone lines to a central computer in Ann Arbor, Michigan used by Bendix.

99. Bendix charged UGC through the intercompany accounts for many of the services described in paragraphs 90, 93 and 95-98 above. As shown on Exhibit O, some of the services were separately itemized and others were included in a central office assessment ("COA"). Bendix charged a COA to many subsidiaries in order to compensate Bendix for support services supplied to those entities. The rate charged by Bendix as COA was determined by the general level of services rendered to a particular subsidiary, and the rate was applied to the subsidiary's sales. Immediately preceding its sale by Bendix, UGC's rate of assessment was half the maximum rate charged to other subsidiaries. This reduced COA reflected the fact that UGC was able to independently provide certain support services without resort to Bendix staff or facilities.

100. UGC's quarterly pension liability, workers' compensation accrual, and monthly profit sharing (Bendix Salaried Employees Savings and Stock Ownership Plan) plan liability were transferred to Bendix through the intercompany accounts for funding by Bendix. UGC's account reflected corresponding liabilities. These UGC liabilities to Bendix were reflected in intercompany accounts known as the "open account" and the "note account."

101. No interest was charged on the debit balance in the intercompany open account for a period of thirty (30) days until the balance was transferred from the open account to UGC's note account. Interest was charged on the note account at a market rate. UGC generally did not pay interest for a given month; the amount of accrued interest was added to the note account.

102. Bendix made periodic short-term and long-term working capital loans to UGC, which were reflected in the intercompany note account. Exhibit P.

103. In October 1978 and again as of March 31, 1981, just prior to the sale of UGC, Bendix capitalized a portion of UGC's debt to Bendix. To reflect this capitalization, UGC's liability to Bendix was transferred from the liability to the equity portion of UGC's balance sheet, thereby eliminating UGC's fixed obligation to repay the debt.

104. The amount of UGC's debt capitalized by Bendix in 1978 was $8.2 million. The amount capitalized in 1981 was $2.9 million.

105. There was no sharing of patents, technology or know how between Bendix and UGC although the companies had a common patent department.

106. UGC had its own pension plan.

107. Bendix did not purchase goods from UGC.

108. As far as can be determined, UGC did not purchase goods from Bendix.

109. UGC did not perform services for Bendix. Other than as described above, Bendix did not provide services to UGC either directly or through any of its subsidiaries or affiliates.

110. Bendix did not pledge its UGC stock.

111. UGC and Bendix did not have a common personnel manual.

112. Bendix and UGC did not engage in centralized purchasing, have the same sales force or common advertising; did not have common banking facilities, and did not transfer by sale or lease real or personal property between each other.

113. Prior to the sale of UGC in 1981, the Bendix planning department evaluated UGC's future potential from the point of view of potential return on assets, possible acquisitions for UGC, and fit within Bendix. There appeared to be no appropriate acquisition targets and there was a lack of fit with Bendix. By this point, UGC was considered by Bendix to be within the Bendix natural resources industry group, and Bendix had determined to reduce its involvement in that area.

Attached hereto as Exhibit Q is a memorandum dated November 13, 1980 from Mr. Agee to the Bendix Board of Directors setting forth reasons for the sale of UGC.

114. Bendix's initial intention was to sell its shares in UGC to the public.

115. To prepare UGC to stand on its own for such a public sale, Bendix hired a chief financial officer for UGC and two to three key staff people.

116. The Bendix stock of UGC was sold to Seiscom Delta, Inc. in July 1981 for approximately $80 million.

VI. PROCEEDS FROM SALE OF ASARCO AND UGC STOCK

117. Bendix placed the proceeds from the sale of its 20.6% interest in Asarco and its stock in UGC in an interest bearing investment account (the "Account") with Lehman Brothers. The Account was administered, and all securites [sic] on deposit were located, outside of New Jersey.

118. The Asarco and UGC proceeds were placed in the Account on the following dates in the following amounts:

Asarco:	1/26/81	$ 210,881,000
	4/20/81	28,056,139
	5/29/81	102,772,897
	TOTAL	$ 341,710,036
UGC:	7/28/81	$ 80,000,000

119. Bendix deposited monies from other sources in the Account as well.

120. Total interest earned in the Account for fiscal year ending September 30, 1981 amounted to $12,702,331. See Exhibit R.

121. As shown in Exhibit S, under the FIFO method, interest earned in the Account in fiscal 1981 attributable to the Asarco and UGC proceeds respectively was:

Asarco	UGC
$1,330,021	$1,901,323

122. As shown on Exhibit T, under the LIFO method, interest earned in the Account in fiscal 1981 attributable to the Asarco and UGC proceeds respectively was:

Asarco	UGC
$1,989,403	$1,405,216

123. The investments in the Account were of a highly liquid nature generally with maturities of less than 90 days.

VII. OTHER BENDIX ACTIVITIES

a) Stock Repurchase

124. In late January 1981, Bendix made a public offer, valid until February 27, 1981, to purchase up to 4,000,000 of its shares at $64 per share and reserved the right to purchase an additional 1,000,000 shares.

125. As reflected in the filings made by Bendix with the Securities Exchange Commission in connection with this offer, the source of funds for the purchase of shares was the proceeds of Bendix's sale of its interest in Asarco and various subsidiaries.

126. Withdrawals from the Account in March and early April, 1981 were most likely used to pay for Bendix's purchase of its stock.

127. Bendix spent a total of $257.5 million on the purchase of its shares.

b) Bendix Acquisitions and Divestitures

128. Over the years Bendix engaged in selective acquisitions and divestitures of companies or assets of companies. While there were different reasons for each Bendix acquisition or divestiture, a major theme in this area, as expressed by Mr. Lord, a senior member of the Bendix Planning Department during Mr. Agee's tenure, was whether an acquisition or disposition would enhance the existing product areas of Bendix. For example, a logical off-shoot of the businesses engaged in by the Automotive Group was the acquisitions of Fram Corporation (which made automotive oil and air filters) and Autolite (which made spark plugs). These two acquisitions were designed to expand Bendix's reach into the automobile "after market". Intended to broaden Bendix's product offering in the automotive field was the acquisition of Toledo Stamping and Manufacturing Company, a producer or [sic] engine rocker arms. The acquisition of Warner & Swasey Company enhanced Bendix's position in the machine tools business.

129. While Bendix owned BFPC, its forest products business, acquisition of Bass & Co. (retailer of specialty building materials), Caradco (maker of wood windows and doors), Modern Materials (maker of aluminum building products) and Coin Millwork (maker of moldings) was accomplished because these companies were involved in the manufacture, sale and distribution of products that utilized forest products as raw materials.

130. Bendix, on occasion, invested in or made an acquisition in business areas in which it had no existing specific involvement. Examples of this sort of activity included the purchase of UGC, BFPC, Skagit Corporation and the Asarco minority stock interest.

131. Suggestions for acquisitions or divestitures might come from various sources from within Bendix including a group or division's/strategic plan, the planning department or from senior management. If an acquisition or divestiture was considered, the analysis of the impact of that transaction upon Bendix and the relative merits thereof might be performed by the division or group from which the idea emanated or by the Bendix planning department. The controller's department generally would conduct financial analysis of the proposed transaction. Once all analysis and evaluation of the transaction were completed, the proposal would be presented to the chairman for review. No acquisition proposal or divestiture could be presented to the Bendix Board of Directors without the approval of the chairman.

132. Bendix's 1966 Annual Report to Shareholders lists the following acquisitions at page 5. (The acquisition's principal business is indicated in parentheses):

- Besly-Welles Corporation (grinding machines and metal cutting tools)

- P & D Manufacturing Company, Inc. (automotive ignition parts)

- Fonda Gage Company (precision gage blocks for the metalworking industry)

- Beck-Lee Corporation (medical electronics equipment for doctors)

- Scully-Jones Company (tool holders and cutting tools for machine tools)

- Marine Advisors, Inc. (applied oceanography)

- Mosaic Fabrications, Inc. (fiber optics producer)

133. Bendix's 1967 Annual Report to Shareholders lists the following acquisitions at page 9:

- Fram Corporation (manufacture and sale of filters for internal combustion engines)

- Macklin Co. (grinding wheels for the automotive, glass, and steel industries)

- Titan Abrasives Company (abrasive grinding disks for the cutting tool industry)

- Industrial Fabricating Company (heat exchangers)

- Texas Pipe Bending Company (minority interest; manufacturer of welded pipe for refineries, chemical and petrochemical plants)

134. In 1967 Bendix disposed of its Marine Division.

135. Bendix's 1968 Annual Report to Shareholders lists the following acquisitions at page 30:

- Fram Corporation purchased the shares of Superior Machine & Tool Co. (manufacturer of tools and dies).

- Certain assets of Roberts Toledo Rubber Co. (molded rubber products).

- Consolidated Vacuum Corp. (vacuum systems for industrial processing and scientific and research laboratories).

- Fram Corporation purchased Mercury Filter Corp. (industrial air filters).

- Geo Prospectors, Inc.

136. The Chairman's letter in Bendix's 1969 Annual Report to Shareholders recounts the history of Bendix which began as an aviation corporation supplying military systems, and states:

> Recognizing the vital necessity to broaden the base of our business so as to be less dependent on the government sector, we intensified our efforts to

expand in other commercial and industrial markets.

Page 4 of the same Report states:

Acquisitions have played a significant role in the growth of your Corporation during the past decade.

137. Bendix's 1969 Annual Report to Shareholders lists the following acquisitions at page 13:

- Buhr Machine Tool Company (automatic transfer machines).
- American Abrasive Company (abrasive grains, powders and wheels).
- Skagit Corporation (logging equipment and systems and other handling equipment).
- Fram Corporation purchased Superior Filter Glass Corporation.
- Remaining 49% of the stock of Bendix-Westinghouse Automotive Air Brake Co.
- Remaining stock in Aviation Electric Ltd.

138. During 1969 Bendix disposed of:

- Computing Devices of Canada Ltd.
- Bendix's Semiconductor Division
- UGC sold its Houston data center

- Bendix's Scientific Instruments and Equipment Division sold its dosimeter business.

139. The Chairman's message in Bendix's 1970 Annual Report to Shareholders states that Bendix merged with American Forest Products Corporation during that year. This was Bendix's largest acquisition to date and represented a new market for Bendix. American Forest Products Corporation was in the timber management, lumber, building materials, wood and corrugated containers, and aluminum siding businesses.

140. Bendix's 1971 Annual Report to Shareholders at page 33 mentions six relatively small acquisitions during the year and the acquisition of 50% interests in two European companies.

141. The Chairman's message in Bendix's 1972 Annual Report to Shareholders states that Bendix is pursuing "broad corporate strategies to further increase the non-government segment of our business, to pursue the diversification of our major lines of business, to expand our role in non-cyclicial [sic] or counter-cyclicial [sic] markets and to increase our international involvement."

142. During 1973 Bendix acquired Boise Cascade's international mobile home and recreational vehicle businesses and reorganized these activities as Bendix Home Systems. During calendar year 1973 Bendix acquired the Autolite spark plug manufacturing facility and the Autolite trademark from the Ford Motor Company.

143. Bendix's 1973 Annual Report to Shareholders at page 1 discusses "the principle of diversification" and states that Bendix's markets and products "are not necessarily on the same business cycles." The 1973 Report states further at page 1:

> We also continued our policy of disposing of minor operations which do not relate to our long-range business strategy.

144. Bendix's 1975 Annual Report to Shareholders states at page 8 that one of the principles followed at Bendix "has been the careful diversification of the Company into four broad lines of business— automotive, aerospace-electronics, industrial-energy and shelter."

145. The 1975 Annual Report states that pursuant to an order of the Federal Trade Commission certain operations of Bendix and Fram Corporation were transferred to a new subsidiary, Facet Enterprises, which would be divested no later than November 1976.

146. The letter to shareholders in Bendix's 1976 Annual Report states that Bendix's earnings record in the fifties and sixties was "spotty" due to excessive dependence on government work and on "the cyclical ups and downs of the industries [Bendix] served".

147. Bendix's 1977 Annual Report to Shareholders states in the letter to stockholders that "we have pursued a deliberate policy of diversification both within and among our lines of business, and geographically as well, in an effort to arrive at a combination of activities that helps insulate the company as a whole from the ups and downs of any one of them."

Page 3 of the Report states that Bendix's acquisitions program has been a source of growth. This was the first of Mr. Agee's reports as chairman of Bendix. The Report notes at page 2 that one of the keys to Bendix's reputation for reliability and high quality is its technological strength. During 1977 Bendix acquired Coin Millwork, a maker of wood moldings.

148. The chairman's report in the 1978 Annual Report to Shareholders states that Bendix has "successfully pursued a strategy of diversification that has brought us resistance to the ill effects of swings in the business cycle. First, we are in four major businesses: automotive, aerospace-electronics, forest products, and industrial-energy. Second, within each of these, we are also diversified."

149. During 1978, Bendix acquired Toledo Stamping and Manufacturing Company, a manufacturer of engine rocker arms for cars and trucks, and two small companies manufacturing components in the aerospace-electronics area of Bendix's business and sold the North American Manufactured home and recreational vehicle operations of Bendix Home Systems.

150. The chairman's report in Bendix's 1978 Annual Report to Shareholders reports the "single largest investment," in the company's history—the acquisition of 18.4% (ultimately to become 20.6%) of the shares of Asarco. Page 8 of the Report states that the acquisition of an interest in Asarco "strengthens Bendix for the 1980's with a substantial diversification into nonferrous metals and minerals."

151. The letter to stockholders in Bendix's 1979 Annual Report to Shareholders states at page 3 that one

"strong element" in Bendix's strategy has been "a policy of diversification aimed at insulating the Company's total profitability from the cyclical troubles of any particular industry or business" and that another element in the strategy has been a "careful effort to seek out the high return, high-growth segments of the markets [Bendix] serve[s]."

152. During 1979 Bendix acquired Bass & Company, a producer and distributor of building materials, and the Caradco Division of Scoville, a producer of windows and sliding doors.

153. During 1980 Bendix acquired Warner & Swasey Company, a machine tool manufacturer for $300.7 million, Bendix's largest acquisition to date, and sold Skagit Corporation for $28.3 million.

154. In 1980 there occurred certain changes in strategy at Bendix. The basic thrust of this revised strategy was to focus more heavily upon the high technology aspects of Bendix's existing businesses and to examine acquisitions of companies in high technology businesses that either might complement those existing Bendix businesses or represent an entry into new areas. In addition to these efforts, Bendix established an Advanced Technology Center to undertake basic research and exploratory development.

155. As part of this shift in strategy, there was a re-evaluation by Bendix of its natural resource group which included BFPC, UGC and other companies and, for administrative purposes only, the Asarco investment. It was determined that continued involvement in these industries was not necessarily consistent with Bendix's desire to concentrate more significantly on developing its

own technological capabilities and on companies which would assist in that effort.

156. Consistent with these decisions and the shift away from the natural resource businesses, during its 1981 fiscal year (10/1/80–9/30/81), Bendix disposed of or agreed to dispose of:

- BFPC for $435 million.

- UGC for $80 million.

- Bass, Caradco, and Modern Materials for a total loss of $12.5 million.

- Its 20.6% stock interest in Asarco for $336 million.

157. The sale of BFPC was consistent with Bendix's determination to reduce its involvement in businesses tied to natural resources.

158. Bendix's 1980 Annual Report to Shareholders states in the chairman's message:

> Our investment in the forest products business and Asarco were made in line with our policy of diversification as an insulator against the cyclicality of any particular business...
>
> When consummated, the sales of the forest products business and our interest in Asarco will reflect the basic soundness of investing in them originally; will increase the company's financial strength substantially; and will leave us well positioned to make prudent investments in the

future of Bendix. As always, the overriding criteria for new investments will be the maximization of stockholder value.

159. The Chairman's letter in Bendix's 1981 Annual Report to Shareholders states at page 6:

> Finally, our redeployment of assets through our divestment program also contributed significantly to net income in 1981. We completed our plan for major divestments with the sale of our forest product business, our interest in Asarco Incorporated, and the stock of our subsidiary United Geophysical Corporation.

160. The 1981 Annual Report to Shareholders states at page 7 that the net gains from Bendix's various divestments "allowed the company to purchase some four million shares of our own stock which should enhance future shareholder value."

161. The cash proceeds from the various sales which took place in fiscal year 1981, created liquidity and additional debt capacity to enable Bendix to be in a position to make a sizable acquisition if an appropriate acquisition candidate materialized.

162. On August 24, 1982, Mr. Agee requested authorization from the Bendix Board to make a public offer to purchase up to 50% of the shares of Martin Marietta, with the intent of acquiring the remaining 50% in exchange for Bendix shares. Attached as Exhibit U is a copy of Mr. Agee's memorandum of August 24, 1982 proposing acquisition of Martin Marietta (called "Georgia" in the Exhibit). Bendix subsequently increased its offer to purchase up to 70% of Martin Marietta's stock.

163. Martin Marietta's principal business was aerospace related, where it was a prime contractor producing entire systems, with a strong involvement in the production of missiles. Bendix had an aerospace group with a primary focus in aircraft, and was primarily a subcontractor of component parts. Bendix believed the businesses of Martin Marietta and Bendix were complementary.

164. Bendix purchased approximately 70% of the stock of Martin Marietta. The total cash purchase price for the Martin Marietta stock was slightly in excess of $1 billion and, with the assumption of Martin Marietta's debt, approached $1.5 billion. According to Bendix's 1982 Annual Report to Shareholders, Bendix incurred additional debt of $793.7 million and, decreased its cash and marketable securities by $424.1 [sic] primarily as a result of its purchase of the common stock of Martin Marietta.

165. Although Bendix succeeded in acquiring approximately 70% of Martin Marietta's shares, it was unable to call a meeting of the Martin Marietta shareholders before Martin Marietta acquired 50.3% of Bendix's shares. Allied then (1) purchased all the Bendix shares owned by Martin Marietta, (2) purchased all the Martin Marietta shares held by Bendix and (3) resold a large portion of the Martin Marietta shares to Martin Marietta. Allied then acquired the remaining Bendix

shares through a merger, and Bendix became a wholly owned subsidiary of Allied.

Respectfully submitted,

RIKER, DANZIG, SCHERER,
HYLAND & PERRETTI
Attorneys for Bendix
Corporation

Dated: June 22, 1987

By: /s/ Mark S. Rattner
Mark S. Rattner
A Member of the Firm

W. Cary Edwards
Attorney General of New
Jersey
Attorney for The Director,
Division of Taxation

Dated: June 22, 1987

By: /s/ Mary R. Hamill
Mary R. Hamill
Deputy Attorney General

BENDIX CORPORATION
v.
DIRECTOR, DIVISION OF TAXATION

LIST OF EXHIBITS TO STIPULATION OF FACTS

Exhibits

A. 1981 Corporation Business Tax Return (¶2)

B. 1981 Bendix Annual Report (¶13)

C. Excerpt from 1979 Bendix Annual Report describing forest products business (¶13)

D. Executive Summary from Robert O. Bradley to William Agee relating to study of national resource companies (¶42)

E. Memorandum dated March 31, 1978 from W.M. Agee to Long Range Planning Committee Entitled "Long Range Growth and Acquisition Planning" (¶44)

F. Excerpt from Bendix Board minutes of April 13, 1978, together with copy of memorandum of April 12, 1978 from William Agee regarding ASARCO (¶47)

G. Resolution of Bendix Board of Directors approving acquisition of up to 21% of the stock of ASARCO (¶49)

H. Stock Purchase Agreement dated as of April 13, 1978 between ASARCO and Bendix (¶50)

I. Reports to Bendix Board on status of ASARCO investment (¶57)

J. Excerpts from ASARCO proxy materials relating to sales of asbestos from ASARCO subsidiaries to Bendix (¶62)

K. Bendix Board Minutes of October 7, 1980 and excerpt of materials presented by Lehman Brothers at that meeting (¶63)

L. Excerpt from draft prospectus relating to public sale of UGC (¶71)

M. Listing of UGC directors and officers from May 1965 to December 1972 and from February 1977 to July 1981 (¶75)

N. Listing of common employees and directors of Bendix and UGC (¶75)

O. Central Office Assessment reports (¶99)

P. Intercompany note account documentation (¶102)

Q. Memorandum dated November 13, 1980 from William Agee to Bendix Board of Directors relating to sale of UGC (¶113)

R. Statement of interest earned in Lehman Brothers' account (¶120)

S. Interest earned in Lehman Brothers account attributable To ASARCO and UGC proceeds calculated on FIFO Method (¶121)

T. Interest earned in Lehman Brothers' account attributable to interest earned on ASARCO and UGC Proceeds on LIFO Method (¶122)

U. Memorandum dated August 24, 1982 from William Agee regarding proposed acquisition of Martin Marietta (¶162)

(Exhibit E appears on pp. J.A. 87–118 as Exhibit D-17 to the transcript of the deposition of W.M. Agee)

(Exhibit F appears on pp. J.A. 119–132 as Exhibit D-18 to the transcript of the deposition of W.M. Agee)

(Exhibits G, H, and J through T omitted in printing)

EXHIBIT A TO THE STIPU

STATE OF NEV
CORPORATION BUSIN
(FORM CB

For the taxable year beginni
ending September 30, 1981

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COMPUTATIO

. . .

SECTION II TAX BASED ON
ASSETS OR AUTHORIZED CA
3. AMOUNT OF TAX (from Sch
Item 12, Page 3) ....

SECTION III TAX BASED ON
NET INCOME
4. AMOUNT OF TAX (from Sch
Item 42, Page 2) ....

SECTION IV TAX COMPUTAT
5. Total Tax Liability—Total Ite
applicable plus Item 4. Certain
Companies enter only Item 4 (s
Enter not less than $25.00 for a
corporation or $50.00 for a forei
corporation or $250.00 for an In
Co., Regulated Investment Co.
Estate Investment Trust ....

LATION OF FACTS

/ JERSEY
ESS TAX RETURN
-100)

g October 1, 1980, and

N OF TAX

ENTIRE NET WORTH,
PITAL STOCK
edule B-1,
.... 145,029

NTIRE

edule A,
.... 404,078

ION
n 2 or 3, as
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omestic
n
estment
r Real
.... 549,107

(Computation of Tax cont'd)

6. PREPAYMENT - All taxpayers must
enter 60% of Item 5 (See Instruction 25) 329,464

7. Enter Total of Items 5 and 6.................................... 878,571

8. Credit - Prepayment, Tentative Payments
and Overpayments—(See Instruction 36)

(a) Previous Year's Prepayment................................. 282,022
(b) Total Payment made with 1980
Tentative Return 3,000,000
(c) Overpayment claimed as credits from
1979 Tax Return... [Blank in Original]
Total 3,282,022

9.Balance of Tax Due
(Item 7 Less Item 8).................................. [Blank in original]

10. (a) Penalty [Blank in Original];
(b) Interest [Blank in Original];
(See Instruction 37). Total .... [Blank in original]

11. Total Balance Due
(Item 9 plus Item 10).................................[Blank in original]

12.If Item 8 is greater than Item 7, Enter
Amount of Overpayment 2,403,451
Amount of Item 12 to be Credited
to 1981 Return.. [Blank in Original]
Refunded $2,403,451
(Certification and Verification omitted in printing)

* * *

THE BENDIX CORPORATION

STATE INCOME TAX CALCULATION

	RESULT
NET TAXABLE INCOME (L28 OF FED RETURN) - EV	534,780,569
TOTAL NET TAXABLE INCOME	534,780,569
ADDITIONS	
OTHER ADDITIONS TO INCOME BEFORE APPORTIONMENT-WI	[Blank in Original]
STATE INCOME TAX - WI	2,900,632
TAX EXEMPT INTEREST INCOME - EV	[Blank in Original]
INT EXP TO 10 PCT OWN LESS HI $1000 10 PCT INT-EV	[Blank in Original]
TOTAL ADDITIONS TO FEDERAL INCOME	2,900,632
DEDUCTIONS	
OTHER DEDUCTIONS FROM INCOME BEF APPORTIONMENT-WI	[Blank in Original]
DIV INCOME FROM CORP AT LEAST 80 PCT OWNED - EV	206,043,847
50 PCT OF DIV FROM CORP LESS THAN 80 PCT OWNED-EV	3,515,250
FOREIGN TAX CR ON FOR INC (EXCL FOREIGN DIV) - EV	3,890,582

(State Income Tax Calculation cont'd)

TAX W/H AND DEEMED PAID ON FOREIGN DIV - EV	[Blank in Original]
NET CAP LOSS CO	
FED JOB + WIN CR	44,581
EXP TAX EXEMPT	[Blank in Original
TOTAL DEDUCTION FROM FEDERAL INCOME	213,494,260
FEDERAL TAXABLE INCOME ADJUSTED TO STATE BASIS	324,186,942
DIRECTLY ALLOCABLE ITEMS - EV	[Blank in Original]
MISCELLANEOUS NON-BUSINESS INCOME-EV	267,351,914
TOTAL DIRECTLY ALLOCABLE ITEMS - EV	267,351,914
BUSINESS INCOME TO BE APPORTIONED	56,835,028
APPORTIONMENT FACTOR	7.899628
APPORTIONED BUSINESS INCOME	4,489,755
DIRECTLY ALLOCABLE ITEMS - WI	[Blank in Original]
MISCELLANEOUS NON-BUSINESS INCOME-WI	[Blank in Original]

(State Income Tax Calculation cont'd)

TOTAL DIRECTLY ALLOCABLE ITEMS - WI	[Blank in Original]
TAXABLE INCOME BEFORE ADJUSTMENTS	4,489,755
DEDUCTIONS FROM TAXABLE INCOME	[Blank in Original]
OTHER DEDUCTIONS FROM INC AFTER APPORTIONMENT - W	[Blank in Original]
TOTAL DEDUCTIONS FROM STATE TAXABLE INCOME	[Blank in Original]
ADDITIONS	
OTHER ADDITIONS TO INCOME AFTER APPORTIONMENT - W	[Blank in Original]
TAXABLE INCOME AFTER ADJUSTMENTS	4,489,755
TAX RATE	9.00%
TAX BEFORE ADJUSTMENTS	404,078
ADDITIONS	
OTHER ADDITIONS TO TAX	[Blank in Original]
COMP TAX ON NET WORTH, CAP STOCK OR ASSETS - WI	145,029
TOTAL ADDITIONS TO TAX	145,029

(State Income Tax Calculation cont'd)

DEDUCTIONS	
OTHER DEDUCTIONS FROM TAX	[Blank in Original]
NET ADJUSTMENTS	145,029
FINAL TAX	549,107

* * *

THE BENDIX CORPORATION

APPORTIONMENT FACTORS

	RESULT
PROPERTY WITHIN	105,813,233
PROPERTY EVERYWHERE	932,955,427
PROPERTY PERCENTAGE	11.342260
PAYROLL WITHIN	86,980,620
PAYROLL EVERYWHERE	835,936,393
PAYROLL PERCENTAGE	10.405172
SALES WITHIN	42,398,118
SALES EVERYWHERE	2,172,646,697
SALES PERCENTAGE	1.951450
AVERAGE APPORTIONMENT PERCENTAGE	7.899628

* * *

THE BENDIX CORPORATION

CORPORATION TAX RETURN
FISCAL YEAR ENDED SEPTEMBER 30, 1981

ALLOCABLE NON-BUSINESS INCOME

Net Gain From the Sale of Stock and Securities	$243,952,176
Interest	23,399,738
Total Allocable Income - Everywhere	$267,351,914

Income which has no unitary business relationship to taxpayer under the principles described in *Asarco Inc. V. Idaho State Tax Commission,* U.S. Supreme Court, June 29, 1982, has been allocated as non-business income.

THE BENDIX CORPORATION
SOUTHFIELD, MICHIGAN
CORPORATION TAX RETURN
FISCAL YEAR ENDED SEPTEMBER 30, 1981

STATEMENT ON SCHEDULE A

The taxpayer is include [sic] in a consolidated income tax return for federal income tax purposes. Items 1 to 36 as reported on Schedule A of the New Jersey Corporation Business Tax Return are reported by the taxpayer on its own separate basis.

* * *

THE BENDIX CORPORATION

1120 INCOME TAX RETURN

	GROSS RECEIPTS OR GROSS SALES	2,162,905,517
	LESS: RETURNS AND ALLOWANCES	40,224,534
1	NET SALES	2,122,680,983
2	LESS: COST OF GOODS SOLD (SCHEDULE A)	1,420,378,309
3	GROSS PROFIT	702,302,674
4	DIVIDENDS (SCHEDULE C)	213,074,346
5	INTEREST ON OBLIGATIONS OF THE UNITED STATES	4,102
6	OTHER INTEREST	33,979,395
7	GROSS RENTS	409,933
8	GROSS ROYALTIES	20,655,069
9	(A) CAPITAL GAIN NET INCOME (SCHEDULE D)	249,208,276
	(B) NET GAIN OR (LOSS) FROM FORM 4797	528,511

(1120 Income Tax Return cont'd)

10	OTHER INCOME (ATTACH SCHEDULE)	14,801,703
11	TOTAL INCOME (ADD LINES 3 THROUGH 10)	1,234,964,009
12	COMPENSATION OF OFFICERS (SCHEDULE E)	5,952,114
13	SALARIES AND WAGES (NOT DEDUCTED ELSEWHERE)	132,877,205
14	REPAIRS	65,420,379
15	BAD DEBTS	4,308,240
16	RENTS	23,318,168
17	TAXES (ATTACH SCHEDULE)	76,710,850
18	INTEREST	64,146,345
19	CONTRIBUTIONS (ATTACH SCHEDULE)	649,602
20	AMORTIZATION	[Blank in Original]
21	DEPRECIATION FROM FORM 4562	61,037,062
22	DEPLETION	[Blank in Original]
23	ADVERTISING	11,635,752

(1120 Income Tax Return cont'd)

24	PENSION, PROFIT-SHARING PLANS (NO. OF PLANS)	91,174,682
25	EMPLOYEE BENEFIT PROGRAMS	64,948,432
26	OTHER DEDUCTIONS (ATTACH SCHEDULE)	98,004,609
27	TOTAL DEDUCTIONS (ADD LINES 12 THROUGH 26)	700,183,440
28	TAXABLE INCOME BEFORE NOLD [SIC] AND SPECIAL DEDUCTIONS	534,780,569
29	LESS: (A) NET OPERATING LOSS DEDUCTION	[Blank in Original]
	(B) SPECIAL DEDUCTIONS (SCHEDULE I)	199,145,924
30	TAXABLE INCOME (LINE 28 LESS LINE 29 (A) AND (B))	335,634,645

* * *

EXHIBIT B TO THE STIPULATION OF FACTS

Excerpts From the 1981 Annual Report of
The Bendix Corporation

[p.1]

FINANCIAL PROFILE

THE BENDIX CORPORATION AND CONSOLIDATED SUBSIDIARIES

For the Years Ended September 30	**1981**	**1980**	**Percent Change**
Net sales, royalties, and other operating income (in millions)	$4,425.4	$3,864.1	14.5%
Income from continuing operations (in millions)	204.5	134.2	52.4
Net income (in millions)	452.8	191.6	136.4
Income per share from continuing operations:			
A. Before major dispositions*	7.03	4.94	42.3
B. Total	8.35	5.38	55.2
Net income per share	18.49	7.68	140.8
Cash dividends per share	3.00	2.84	5.6

*UGC in 1981; Skagit in 1980. See "Discontinued Operations and Other Dispositions" on page 42.

* * *

[pp. 4-10]

CHAIRMAN'S MESSAGE

For the people of Bendix, 1981 was a year of fulfilled expectations and memorable results. Your company achieved record earnings while many businesses lost ground in a troubled economy.

Not only was it our eleventh consecutive year of earnings growth, but I am also pleased to report equally significant progress in our financial health and flexibility, in decentralization of our operations, in the strength of our management team, and in our technological capabilities. In short, our strategy of the last five years is working.

Your management believes that the results achieved in 1981 are in a real sense a tribute to the dedication and unsurpassed competence of Bendix people throughout the world. Their performance in an extremely challenging year has enhanced in every way our capacity to meet our ambitious aspirations for the future. We hope that this report will enable our shareholders to understand the year's results in the context of those aspirations and in the perspective of our management aims over the last several years.

Bendix' 1981 income from continuing operations increased by 52.4 percent, rising from \$134.2 million in 1980 to \$204.5 million in 1981. Moreover, our strategic restructuring of your company proved rewarding. It was reflected in an increase of net income from all sources of 136.4 percent—from \$191.6 million to \$452.8 million.

To bring 1981 results in
three different but compler
Expressed on an earnings per s

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- Up 55.2 percent fro
from continuing ope

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income from all sou

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mirror our intensified efforts
operations, elimination o
productivity, and improved
asset base.

This progress was by
began. We had chosen to try
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- Restructure signifi
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- Hold to our me
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Any one of these objectives would have made 1981 an unusually challenging year for Bendix people. Yet by pushing energies to the limit and maintaining balance between conflicting demands, Bendix achieved excellent progress in all three areas.

All of our major businesses contributed handsomely to our earnings (see the table on page 35).

Although our Automotive Group no longer represents the dominant contributor to our earnings, it led the way in earnings improvement, recovering from its 1980 decline with a $57.4 million increase to produce income before taxes of $107.4 million. This was a notable achievement in a year in which domestic vehicle manufacturers experienced a severe slump. It reflected the underlying strength and diversity of our automotive operations.

Our Aerospace-Electronics Group reported record earnings of $105.5 million. We achieved our desired balance between short-term profits and expanded current expenses to finance programs for the future.

Our Industrial Group turned in $65.9 million in earnings from its activities. We continue to position ourselves and rationalize our actions in order to serve machine tool customers as a broad-based manufacturer.

Finally, our redeployment of assets through our divestment program also contributed significantly to net income in 1981. We completed our plan for major divestments with the sales of our forest products business, our interest in ASARCO Incorporated, and the stock of our subsidiary United Geophysical Corporation.

These major strategic actions converted approximately $500 million in lower-return assets into a liquid portfolio. We retained about the same book value of assets in the business, but dramatically increased their 1981 earning power by producing $65.6 million in portfolio income.

In addition, the effective execution of this asset redeployment program generated approximately $275 million in net gains from dispositions. These gains allowed the company to repurchase some four million shares of our own stock which should enhance future shareholder value.

While we tightened operations, we continued to expand expenditures in technology and engineering. Corporate-level commitments in technology were substantially increased as we outfitted and launched our new Advanced Technology Center in Columbia, Maryland and established five separate centers of technology expertise.

This year marked further strengthening of our management. We have promoted more than thirty of our outstanding operating and staff executives to the general manager level and above. We have also brought to Bendix new people who could contribute important insights, experience, and expertise. This effort also included the election to our Board of Directors of three individuals with outstanding credentials.

Thomas P. Stafford is perhaps best known as commander of Apollo 10 and of the Apollo-Soyuz joint U.S./Soviet space flight. General Stafford brings experience as a key project manager in a large organization as well as an understanding of advanced

technology and the teamwork necessary for its successful application.

William P. Tavoulareas, President of Mobil Corporation, adds to our Board his long experience in operating one of the largest diversified energy-based companies in the world.

Our third new board member is Bendix' new President, Alonzo L. McDonald, Jr., who served with distinction in key positions in the private sector and in the federal government. Al McDonald has already demonstrated at Bendix his ability to organize complex functions, marshal the best efforts of diverse staffs, help implement our strategies, and supplement our existing strengths.

Throughout the company, we pursued our decentralization philosophy. By realigning our primary operating responsibilities directly to our different businesses, we have unleashed a new force of management imagination and innovation. We continue to refine and improve decentralization in Bendix as we gain confidence and commitment for this concept of organization.

No year can stand alone regardless of the results produced. Its real significance—as in 1981—is best understood by viewing its place in a broader spectrum of time.

Your management is committed to consistent high performance and efficient utilization of its asset base. This commitment is reflected in the diversification of our earnings over the last five years. In 1977 about 61 percent of our earnings came from automotive operations.

Although that Group's earnings rebounded to lead the others in 1981, we have successfully shifted the corporate balance; only 28 percent of our record 1981 earnings came from the Automotive Group. The Aerospace-Electronics Group contribution to earnings kept pace with the Corporation's overall rate of growth. Earnings contributed by the Industrial Group increased significantly in this same five-year period from 11 percent to 17 percent. Another 17 percent of earnings was produced by our portfolio investments.

Thus, we have achieved less dependence on automotive operations while still expanding them, have maintained a solid rate of growth in our aerospace-electronics business, have built a major position in the industrial products markets, and have created a substantial investment portfolio.

Our growing emphasis on higher technology, including research, development, and engineering, is not new. We believe success in this area is a key to progress in this country and the rest of the free world. Our annual expenditures here have nearly doubled over the past five years. This steady trend reflects a determination to alter fundamentally the mix of our strengths, even during the difficult phases of business cycles.

Although economists forecast 1982 to be a difficult year, we anticipate continued progress at Bendix. We are, of course, subject to economic conditions, particularly in our Industrial Group, but we expect to exceed our 1981 operating record excluding gains from dispositions and discontinued operations.

Looking beyond next year, we are determined to reach still higher levels of excellence and sustained performance.

We have the capability to expand or restructure our businesses through acquisitions and other investments. A three-pronged acquisition program is well under way. The first concerns small new ventures that can open windows of opportunity for Bendix. We have made four such investments in 1981 and we anticipate continuing investments of this kind.

Second, we are considering natural extensions of our existing businesses which could improve our market position, increase our competitive effectiveness, and expand our longer-range potential. Resources will be available on a continuing basis to finance natural extensions of our existing businesses.

A third thrust is directed toward major businesses which could provide additional dimensions to the company. We are interested in sound values in areas in which our skills and market capabilities can be fully utilized. Since neither Bendix' future nor its earnings stability is dependent on making a near-term move, we are proceeding conservatively but persistently in this direction.

We have ended the year stronger than Bendix has ever been. Our assets are better structured to produce future earnings and to seek out new opportunities; our operations are more efficient; your management team is stronger; and our enthusiasm is high for the exciting tasks that lie ahead.

All of this has been achieved by Bendix people. Their solid efforts, their inspired performance, and the application of their special talents have become a Bendix hallmark—the power of ingenuity.

/s/ William M. Agee

WILLIAM M. AGEE
Chairman and Chief Executive Officer
December 9, 1981.

(Pictures, charts and graphs omitted in printing)

[p. 11]

THE BUSINESSES OF BENDIX

Bendix serves three major markets—aerospace-electronics, automotive, and industrial.

The Aerospace-Electronics Group provides products and services primarily for the commercial, military, and general aviation markets, and for other defense and space programs.

The Automotive Group supplies systems and components to domestic and foreign manufacturers of passenger cars, light trucks, and heavy vehicles, and also supplies a variety of replacement parts.

The Industrial Group supplies the metalworking industry with a wide range of machine tools and accessories and produces heavy-duty equipment and piping systems.

* * *

[p. 37]

FINANCIAL STATEMENTS

The Bendix Corporation and Consolidated Subsidiaries
CONSOLIDATED STATEMENT OF INCOME

For the Years Ended September 30(In millions, except share amounts)	1981	1980	1979
Income			
Net sales	\$4,393.1	\$3,837.6	\$3,382.8
Royalties and other operating income	32.3	26.5	29.9
Miscellaneous income (deductions)—Net	209.0	30.7	(2.8)
Total	4,634.4	3,894.8	3,409.9
Deductions			
Cost of sales	3,509.0	3,033.2	2,681.9
Selling and administrative expenses	627.3	540.8	457.4
Interest expense	110.0	82.9	49.8
Minority interests	4.5	8.4	6.5
U.S. and foreign income taxes	179.1	95.3	95.0
Total	4,429.9	3,760.6	3,290.6

[p. 37 cont.]

Income from Continuing Operations	204.5	134.2	119.3
Income from discontinued operations, net of income taxes	248.3	57.4	43.3
Net Income	$ 452.8	$ 191.6	$ 162.6
Average Number of Common and Common Equivalent Shares Outstanding (in thousands)	24,482	24,952	22,904
Net Income Per Share			
Income from continuing operations	$ 8.35	$ 5.38	$ 5.21
Income from discontinued operations, net of income taxes	10.14	2.30	1.89
Net Income	$18.49	$ 7.68	$ 7.10
Cash Dividends Per Share	$ 3.00	$ 2.84	$ 2.56

See Notes to Consolidated Financial Statements which constitute an integral part of this statement.

[p. 38]

The Bendix Corporation and Consolidated Subsidiaries
CONSOLIDATED BALANCE SHEET

September 30 (in millions, except share amounts)	1981	1980
Assets		
Current Assets		
Cash and marketable securities	$ 572.2	$ 44.5
Trade receivables (less allowance for doubtful receivables)	622.0	648.2
Inventories and contracts in progress (less progress payments)	901.6	889.6
Prepaid expenses	86.0	70.5
Total Current Assets	2,181.8	1,652.8
Investments	98.3	33.6
Land, Buildings, and Equipment—Net	737.3	705.9
Goodwill and Other Intangibles (Less Amortization)	86.6	91.2
Net Assets of Discontinued Operations	[Blank in Original]	396.0
Miscellaneous Assets	114.5	44.0
Total	$3,218.5	$2,923.5

[p. 38 cont'd]

Liabilities and Stockholders' Equity

Current Liabilities

Notes payable	$ 103.7	$ 142.6
Accounts and drafts payable	370.5	411.0
U.S. and foreign income taxes	211.6	24.4
Other accrued liabilities	451.4	382.0
Total Current Liabilities	1,137.2	960.0
Long-Term Debt	519.6	549.4
Deferred Income Taxes	61.8	37.0
Minority Interests	33.0	36.3

[p.38 cont'd]

Stockholders' Equity

Preferred Stock, no par (authorized, 7,000,000 shares, issuable in series)		
Series A $3 Cumulative Convertible (authorized, 400,000 shares of $7.50 stated value each; issued, 194,160 and 251,418 shares, respectively; liquidation preference, $10.3 million)	1.5	1.9
Series B 9-3/4% Cumulative Convertible (authorized, 4,600,000 shares of $41.50 stated and liquidation value each; issued, 4,115,023 and 4,068,695 shares, respectively)	170.8	168.9
Common Stock (authorized, 60,000,000 shares of $5 par value each; issued, 19,368,980 and 23,022,961 shares, respectively)	96.8	115.1
Additional Capital	42.7	46.7
Retained Earnings	1,158.9	1,012.0
Total	1,470.7	1,344.6

[p. 38 cont.]

Less—Cost of treasury stock (22,769 shares of Series A Preferred Stock and 83,487 shares of Common Stock)	3.8	3.8
Stockholders' Equity—Net	1,466.9	1,340.8
Total	$3,218.5	$2,923.5

See Notes to Consolidated Financial Statements which constitute an integral part of this statement.

* * *

EXHIBIT C TO THE STI
Excerpt from the 1979
The Bendix Co

[pp. 27 & 28]

FOREST PRO

The Eighties promise bo
opportunities for Bendix fore
prospects point to continuin
wood products—lumber, plyw
and particleboard—that B
Corporation (BFPC) turns out
300 million board feet annuall
and remodeling. But, because c
constraints on the nation's tim
for the future, according to
Guyol, is whether the supply w

BFPC is working coope
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into business areas that a
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Through two acquisitions—on
the other more recently—B
product lines and distrib
acquisition of Caradco, Bend
name products to its line
windows and sliding patio do
are triple-glazed to answer
better insulation.

The recent addition of B
12 distribution centers in the s

ULATION FACTS
Annual Report of
rporation

DUCTS

h difficult challenges and
t products business. The
heavy demand for the
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at the rate of more than
for new home building
increasing governmental
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BFPC President John T.
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atively with government
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me time, it is expanding
e less subject to price
for wood commodities.
completed in fiscal 1979,
PC expanded both its
tion system. With its
x added quality brand-
aluminum-clad wood
rs, including some which
oday's requirements for

ss and Company, with its
utheastern United States,

gives Bendix a stronger position in the sale of specialty building materials. Bass distributes a large variety of products—including mouldings, stair parts, doors, windows, mantels, fireplaces and ceiling tile—to retail lumberyards and to home centers where the weekend handyman purchases his materials.

In addition to strengthening its base through these acquisitions, BFPC has implemented other strategies to assure its growth in the Eighties. It plans to greatly expand its network of distribution yards over the next five years and thus take its variety of products to a larger marketplace. And the subsidiary continues to concentrate its production on value-added products such as mouldings and millwork, which command a higher market price than the raw material from which they are made.

The strong position that these products give Bendix in the home remodeling market has significance for the short term in view of the projected downturn in new home construction. In 1979, housing starts declined from the 1978 level and current indicators—principally the rate of interest on new home mortgages—show clearly that the rate of new builds in 1980 will be substantially below the 1979 level.

While government monetary policy and the availability of mortgage and construction financing have a major impact on the homebuilding industry, and thus, on the demand for and price of wood commodities, another type of government involvement in the forest products business is even more serious.

About two-thirds of all timber in Western forests is government-owned. In recent years, more and more

federal timber has been withdrawn from the market, as vast tracts of National Forest land have been designated as wilderness areas or taken out of production for lengthy studies on how they ultimately should be used. As a result, forest products companies find themselves competing for a dwindling resource, and in some areas, find it uneconomical to operate. Such was the case at Johnsondale, California, where Bendix shut down a sawmill this year after 41 years of operation. The sawmill processed timber taken from a part of the forest where 300,000 acres were recently designated as a special wilderness area.

While this development had no significant effect on the earnings of the Corporation, it points to the need for a balance in the country's forest management policies that will allow society's need for wood products to be met in a manner that is consistent with sound conservation practices.

Bendix is a responsible voice in promoting policies which would allow forests to be devoted to multiple use. Bendix operates on the principle of long-term sustained yield which provides that trees could be harvested perpetually at a rate not exceeding that at which they reproduce. Wood is, after all, a renewable resource. And Bendix this year planted 300,000 seedlings on its own lands to assure the cycle will continue uninterrupted so that fifty and one hundred years from now, trees will be maturing for harvest.

Summary

Bendix Forest Products Corporation provides construction lumber, remanufactured wood products and

other materials to the home building and remodeling, industrial and agricultural markets.

BFPC's products include lumber, plywood, particleboard, mouldings, millwork, unfinished furniture, fencing, wooden containers, aluminum siding and accessories, and wood windows and patio doors.

(Pictures and graphs omitted in printing)

EXHIBIT D TO THE STIPULATION OF FACTS

From the desk of
R.O. BRADLEY

April 7, 1977

TO: W. M. Agee

Jerry Jacobson asked me to send you the attached Value Line and Moody's write-ups on a sampling of natural resources companies. They were selected to provide a basis for thinking about a Bendix involvement in this area.

Rosetta Riley's summary highlights some of the factors to be considered, and the individual summaries highlight some of the advantages and disadvantages to be dealt with.

Going ahead, we will be evaluating an involvement on three bases: a letter stock portfolio approach, acquisition of a modest size company, and merger with one of the more sizable companies.

ROB/br

cc: J. Jacobson
M. Lord
R. Riley
P. Wood

EXECUTIVE SUMMARY

The objective of this exercise was to draw up a list of companies primarily engaged in the production, development and exploration of natural resources. We selected seven companies which we felt were most typical. The companies vary in size as well as type of products manufactured, including Industrial Gases/Fertilizer, Coal and Uranium, Metals & Mining, and Lead, Zinc and Minor Metals.

The following table shows their key characteristics.

Rank	Companies	Sales $M	Net Income $M	Net Worth $M	% Earned on Book Net Worth	% Earned on Market Net Worth	Income Tax Rate	Debt Ratio, 1975 %
1	Gulf Resources & Chemical Corp.	370	27.0	175.0	15.5	15.5	43.0	46.0
2	North American Coal Co.	290	7.0	57.0	16.0	9.0	26.0	79.0
3	Westmoreland Coal Co.	410	37.5	215.0	18.0	11.0	32.0	0.0
4	Newmont Mining Co.	675	85.0	710.0	12.0	12.0	30.0	32.0
5	St. Joe Minerals	880	86.0	455.0	19.0	9.6	35.0	8.7
6	Williams Companies	1200	80.0	730.0	11.0	12.7	32.0	50.0
7	Hanna Mining Co.	400	66.8	386	16.5	12.5	40.0	44.0

We observed that companies classified in the natural resources industry regardless of size and their principal product lines tend to have certain characteristics in

common. Some of the simmilarities [sic] among these companies that impressed us are noted below:

- They tend to be countercyclical to movements in the overall economy, (GNP).

- Income tax rates tend to fall within a range of 30-35%, thereby implying some risk if their tax depletion allowances are ended.

- Whereas these types of companies may offer Bendix an opportunity for diversifying, there is some question as to what Bendix would offer such a company. Of course, to small companies we offer pecuniary benefits and economies of scale, but for larger companies, the advantages of merger with Bendix are somewhat speculative. Perhaps they need the cash flow we could offer.

- All the companies tend to have good to strong reserves of resources.

- Earnings are good, and stable.

- Many of the companies have a very low asset turnover, as low as one or less in some cases. Debt ratios tend to be high—above the Bendix 35% level.

R. Riley
4/7/77

EXHIBIT I TO THE STIPULATION OF FACTS

Excerpts from the Records of the Meeting of the Board of Directors of The Bendix Corporation held on October 26, 1978

[p. 9]

STATUS OF INVESTMENT IN ASARCO

Mr. Agee reported on and the Board discussed the memorandum entitled "Status of Investment in ASARCO", a copy of which had been sent to each director prior to the meeting. A copy of the memorandum, initialed by the Secretary, is filed with the records of the meeting.

There being no further business, the meeting was adjourned.

Secretary

Internal
Memorandum

Bendix
Executive Offices
Southfield, Michigan

Date October 26 1978 Letter No.

To Board of Directors

From W. M. Agee

Subject Status of Investment in ASARCO

In April, the Board authorized an investment of up to 21% of ASARCO common stock at a cost not to exceed $134 million. As discussed at our last meeting, it is our intention to provide a status report on this investment at all future meetings.

As of this date, we hold about 19.6% of ASARCO common stock at a total cost of $125.6 million. In addition, we have an option remaining to acquire 126,200 shares from Crane Co. at $16.50 per share. Exercise of this option would bring our total holdings to just under 20% at a total cost of $127.7 million.

Although ASARCO had earned $4.66 per share as recently as 1974, it concluded 1977 at a $1.10 per share loss, only the second loss in its 78 year history. During the time span since 1974 the industry has been caught up in a worldwide recession, an overhang of worldwide supply, and major new environmental costs. Moreover, for ASARCO, the period has also been punctuated with costly strikes and the permanent closure of a number of its productive facilities. A backdrop and aggravating factor to all this has been an emergence of copper supplies in underdeveloped countries where production

and pricing policies do not follow the usual economic decision patterns for this industry.

The adverse trends experienced by ASARCO in 1977 continued into its first quarter of 1978, resulting in a loss of 42¢ per share compared to a 30¢ per share profit in the same period of 1977. At 11¢ per share profit, the second quarter was somewhat better than the first due principally to a modest improvement in copper prices coupled with a cessation of strikes which had impacted the earlier quarter. Pricing during this quarter, however, remained unfavorable to the year earlier comparable quarter in which the Company earned 56¢ per share.

Since the second quarter, copper prices have continued to firm both in the spot and forward markets. If, as many believe, this is the beginning of a longer term pricing trend, the first half loss should be somewhat more than offset over the balance of 1978, and 1979 should pull solidly into the black.

Our decision to invest in ASARCO was grounded in the belief that the removal of the stockpile overhang by increasing world-wide demand should make this a very profitable business by the early to mid-'80s, given the extremely high cost and long lead times involved in bringing new productive capacity on stream. Also, fundamental to our decision was the fact that while current replacement values of the productive capacity of ASARCO is [sic] about twice book values, we were able to acquire our investment at something around 2/3 of the ASARCO book value.

Other than pricing and market conditions, coping with the various environmental regulations continues to occupy the highest priority of management and financial

resources for ASARCO and the industry as a whole. For example, the industry has indicated that recently imposed EPA regulations concerning ambient air lead tolerances in the manufacturing facilities will essentially close down the industry unless modified in final implementation. It is expected that a compromise will be struck in lieu of this drastic result since no one in the industry appears to be substantially ahead in the state of the art.

To date, we have been accounting for our investment following the cost method, under which only dividends from ASARCO are reflected in income. At the present rate per share, the dividends contribute about 10¢ per Bendix share towards the 25¢ per share annual interest carrying cost of the investment.

At such time that our ownership percentage exceeds 20%, we will most likely account for our investment under the so-called equity method. Under this method, Bendix will include in income its proportionate share of the income or loss of ASARCO, as well as the amortization of the difference between the cost and the underlying book value of its investment, or "negative goodwill". As can be seen from the attached table, the negative goodwill amortization amounts to about 25¢ per Bendix share regardless of ASARCO income. For example, if ASARCO were to earn $2.00 per share, the Bendix per share earnings would include about 40¢ for its portion. This, together with the negative goodwill amortization of 25¢ would mean that the ASARCO investment would contribute about 40¢ per share to the bottom line of Bendix after covering the 25¢ interest carrying cost of the investment. While these numbers are illustrative only, they are reflective of the kind of numbers that we would expect to see, given a continuation of the moderately

improving price trend that has taken place over the last few months.

(Attachment omitted in printing)

Excerpts from the Records of the Meeting of the Board of Directors of The Bendix Corporation Held on February 22, 1979

[p. 4]

FINANCIAL REPORT

Mr. Svec reviewed the financial statements which had been sent to each director prior to the meeting, copies of which, initialed by the Secretary, are filed with the records of the meeting. He reported on the Corporation's annual financial plan as adjusted for ASARCO equity accounting, the adoption of LIFO for the domestic automotive operations and on various other financial matters. Mr. Svec also reviewed, and the Board discussed, the memorandum entitled "Status of Investment in ASARCO", a copy of which had been sent to each director prior to the meeting. A copy of the memorandum, initialed by the Secretary is filed with the records of the meeting.

Internal Memorandum		Bendix Executive Offices Southfield, Michigan
Date	February 12, 1979	Letter No.
To	Board of Directors	
From	W. M. Agee	
Subject	Status of Investment in Asarco	

Since our October 26, 1978 status report to the Board, we have purchased 135,000 additional shares of Asarco at a cost of $2.0 million. We currently hold, at a total cost of $127.6 million, 6.1 million shares, or 20.01% of Asarco's outstanding common shares. We elected not to exercise the remaining option to acquire 126,200 shares from Crane Company because a more favorable price was available on the open market.

As you know, we have adopted the equity method of accounting for this investment effective October 1, 1978. Briefly, the equity method means that Bendix will include in income its proportionate share of the income or loss of Asarco, as well as amortization of the difference between cost and the underlying book value of its investment ("negative goodwill").

As can be seen from the attached table, Asarco's contribution to our first quarter EPS was about two cents a share, after taking interest cost of approximately seven cents a share into account. "Cash earnings", representing Asarco dividends received less income taxes payable, were about two and a half cents a share before interest

costs. Because we report Asarc
these results reflect Asarco's Se

You may have read an Asarc
that about $31 million in LIFO
in its December 31 (our second
will not impact Bendix beca
account in our purchase price a

The accompanying materials in
fiscal 1979 Asarco contributio
excluding interest costs of 31 c
on actual Asarco results (ad
December 31, 1978 and Asarc
Asarco forecasts were based
low 70 cent range, whereas cu
the high 80 cent range, th
conservative.

As we earlier discussed with
invest in Asarco was based
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stockpiles of copper, would
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Demand and prices are at the
and are expected to continue
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February 12, 1979 issue of Bu
time, the only major projects
copper sources—in Iran and
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hindered development.

on a "quarter lag" basis, ptember 30 quarter.

news release indicating profits will be recognized quarter. The LIFO profits se they were taken into llocation.

dicate an expected Bendix to EPS of about 69 cents, nts. This estimate is based usted for LIFO) through o's forecasts. Because the pon copper prices in the rrent copper prices are in e forecasts seem to be

he Board, our decision to on the conclusion that nd, after first reducing rive prices up, in light of ng lead times required to city on stream. Recent orting that view—perhaps anticipated.

r highest levels since 1974 to rise. These trends are attached article from the siness Week. At the same for development of new Mexico—are stalled as a r problems which have

The trend toward higher demand for U.S. produced copper is at least in part the result of U.S. producers adopting a more competitive pricing system, which has greatly reduced foreign imports. In fact, the U.S. is now a net exporter of copper. Also, almost every major foreign copper producing country is having difficulty with both volume and quality of production as a result of political turmoil. For these reasons, as well as the possibility of China becoming a major new market for copper, the prospects for copper producers in the 1980's look significantly more favorable than at the time of our investment decision.

(Attachments omitted in printing)

Excerpts from the Records of the Meeting of the Board of Directors of The Bendix Corporation Held on April 26, 1979

[p. 5]

FINANCIAL REPORT

F. J. Svec reviewed, and the Board discussed, the financial information which had been sent to each of the directors prior to the meeting, a copy of which, initialed by the Secretary, is filed with the records of the meeting. He reported on the impact of ASARCO equity accounting, and on the Corporation's cash flow, debt/equity ratio, inventory and receivable turnover ratios, capital expenditures and various other financial matters.

Internal
Memorandum

Bendix
Executive Offices
Southfield, Michigan

Date April 26, 1979

To Board of Directors

From W. M. Agee

Subject Status of Investment in Asarco

Asarco closed out 1978 on the upswing—with rising prices for nonferrous metals that reflect the improved supply/demand trends evident since we acquired our ownership interest. Closing prices for copper, lead, silver and zinc were considerably higher than those at the beginning of 1978.

Asarco's greatly improved fourth (our second) quarter results are reflected in the attached table. The outlook for Bendix' third and fourth quarters is based on Asarco's 1979 forecast, which is very conservative in view of present metals price trends. February prices reflect increases of 23% for copper, 19% for silver, 19% for lead, and 3% for zinc over average prices used in the forecast.

Asarco's priorities for use of its greatly increased earnings, as indicated in a recent news release, are to increase dividends and reduce debt. A review of the current dividend (of ten cents per quarter) is scheduled for Asarco's April Board of Directors meeting.

All of the foregoing continue to support positively the prospects for our investment in Asarco.

Attachment (Attachment omitted in printing)

Excerpts from the Records of the Meeting of the Board of Directors of The Bendix Corporation Held on June 18, 1979

[p. 7]

STATUS OF INVESTMENT IN ASARCO

Mr. Agee noted that a memorandum entitled "Asarco Status Report" had been sent to each director prior to the meeting. A copy of the memorandum, initialed by the Secretary, is filed with the records of the meeting.

Internal
Memorandum

Bendix
Executive Offices
Southfield, Michigan

Date	June 18, 1979	Letter No.
To	Board of Directors	
From	W. M. Agee	
Subject	Asarco Status Report	

The attached table reflects the current fiscal 1979 outlook for Bendix' equity in Asarco earnings. The outlook reflects nine months of actual results (through March 31) and Asarco's current forecast for its second (our fourth) quarter ending June 30.

The Asarco quarterly dividend increase to 20 cents a share raises "cash earnings" (dividends after tax) from Asarco to an annual level of 20 cents per Bendix share. This compares to Bendix' after tax interest cost of 29 cents a share. The dividend increase and a $100 million reduction in long-term debt since March 31, 1978 are in line with stated Asarco financial priorities discussed in the April 26, 1979 status report.

While there has been some softening of the copper price since it peaked at over $1.00 a pound, the present upper 80 cent range is still slightly higher than the 85 cent price assumed in Asarco's current forecast. Recent declines in copper prices can be attributed to profit taking by metals brokers. Our favorable assessment of copper supply and demand fundamentals remains unchanged. Inventory levels and generally strengthening economies in Europe and Japan lead Asarco to believe, even if U.S. business

conditions flatten, that worldwide markets will not repeat the sharp downturn that occurred in 1974.

Silver and lead prices are now at a much higher level than used in Asarco's forecast. Silver price increases are in response to renewed interest in silver as a hedge against inflation, while lead price increases are due to increased worldwide demand (principally from communist bloc countries) and domestic mine strikes. U.S. producers, hampered by an earlier ruling that lead and zinc prices were not exempt from "voluntary" price guidelines, were experiencing difficulty obtaining sufficient supplies of lead concentrate at a price which would permit adequate margins for their refinery operations. However, U.S. producers, stating that lead should be exempted from the guidelines since it is an international commodity, recently raised prices to be more in line with world price levels.

Attachment (Attachment omitted in printing)

Excerpts from the Records of the Meeting of the Board of Directors of The Bendix Corporation Held on October 25, 1979

[p. 3]

PRESENTATION OF FISCAL 1980 ANNUAL FINANCIAL PLAN

F. J. Svec then presented the Corporation's fiscal 1980 annual financial plan, utilizing various slides. A copy of such slides, initialed by the Secretary, is filed with records of the meeting. Mr. Agee then commented on the outlook for the Corporation for fiscal 1980 and the status of the Corporation's investment in ASARCO. A communication dated October 25, 1979 from W. M. Agee on the latter subject had been sent to each of the directors prior to the meeting. A copy of the communication, initialed by the Secretary, is filed with the records of the meeting.

Internal Memorandum		Bendix Executive Offices Southfield, Michigan
Date	October 25, 1979	Letter No.
To	Board of Directors	
From	W. M. Agee	
Subject	Status of Investment in Asarco	

Attached is a table which shows Bendix' equity in Asarco earnings for fiscal 1979 and the equity in earnings included in the fiscal 1980 Annual Financial Plan (AFP). As the table indicates, our equity in the income of Asarco made an important contribution to fiscal 1979 EPS of $1.11, less interest costs of approximately $.29. Based on Asarco's earnings projections, this investment will contribute a $.46 per share favorable variance to Bendix' earnings trend for fiscal 1980, with equity income of $1.57, less interest costs of $.29.

Price trends during calendar 1979 for silver, copper, lead and zinc are shown in the attached graphs. The surge in silver, copper and lead prices is due, in part, to the market fundamentals which prompted our investment in Asarco. A much more significant factor, however, with respect to the dramatic rise in silver and copper prices has been strong recent interest in those metals as inflation hedges.

Also shown on the graphs are the metal prices assumed in the 1980 Asarco outlook upon which our 1980 AFP was based. A continuation of metals prices at or near their

current levels could generate a substantial favorable variance from the AFP earnings level.

Asarco's Board of Directors, on July 25, 1979, approved the repurchase on the open market of up to 1,000,000 shares of Asarco's stock. The repurchase program will result in a modest increase in Bendix' ownership percentage.

(Attachments omitted in printing)

Excerpts from the Records of the Meeting of the Board of Directors of The Bendix Corporation Held on January 31, 1980

[p. 6]

FINANCIAL REPORT

Mr. Svec reviewed the financial statements which had been sent to each director prior to the meeting, copies of which, initialed by the Secretary, are filed with the records of the meeting. Mr. Svec also commented on the recent currency devaluation in Brazil, indicating its impact on the Corporation. He also reviewed, and the Board discussed, the Corporation's cash flow, inventories and receivables turnover, capital expenditures and various other financial matters including the Corporation's equity investment in ASARCO and the memorandum entitled "Status of Investment in ASARCO", a copy of which had been sent to each director prior to the meeting. A copy of the memorandum, initialed by the Secretary, is filed with the records of the meeting.

Internal Memorandum		Bendix Executive Offices Southfield, Michigan
Date	January 31, 1980	Letter No.
To	Board of Directors	
From	W. M. Agee	
Subject	Status of Investment in Asarco	

The attached table shows the 1980 outlook for Bendix' equity in earnings of Asarco. As the table indicates, based on Asarco forecasts, Asarco is projected to contribute an \$.88 per share favorable variance to Bendix' 1979 earnings, of which \$.75 per share is expected to occur in the first two quarters. The current outlook also reflects a \$.42 per share improvement over the 1980 Annual Financial Plan (AFP).

The favorable variance from 1979 results is primarily due to higher silver, copper and molybdenum prices. In fact, if other operations were to hold as forecasted and silver and copper prices remained at the year end prices indicated on the attached chart, we could expect equity in earnings of Asarco to contribute approximately an additional \$1.10 a share over the next twelve months, or an additional \$.55 per share over the present fiscal 1980 outlook. It is well known, of course, that speculative interest is driving current silver and copper prices even above those in the chart. It is difficult, however, to assess the length of time this influence will be felt. Nevertheless, we believe the basic supply and demand relationships for

both metals are such that present forecast levels are very conservative.

(Attachments omitted in printing)

Excerpts from the Records of
Directors of The Bendix
April 24

[p. 23]

W. M. Agee reported o
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Internal Memorandum		Bendix Executive Offices Southfield, Michigan
Date	April 24, 1980	Letter No.
To	Board of Directors	
From	W. M. Agee	
Subject	Status of Investment in Asarco	

The attached table shows the current 1980 outlook for Bendix' equity in earnings of Asarco, based on actual results through the first two months of Asarco's first (our third) quarter and Asarco forecasts for the remainder of the year. The Asarco contribution to Bendix fiscal 1980 earnings per share is expected to be $2.55 (before the effect of preferred stock issued in the Warner & Swasey acquisition), a $1.44 increase over the contribution to Bendix' 1979 earnings.

The speculative interest which had been driving silver and copper prices evaporated in dramatic and widely publicized fashion during late March. Nevertheless, copper and silver prices have fallen only slightly below the levels used in Asarco's forecast and therefore should not result in a significant unfavorable variance from the current outlook for Bendix' third and fourth quarters. In addition, as the June 30 expiration date for labor contracts at Asarco's principal domestic mines approaches, prices may be favorably impacted by advance buying in anticipation of a possible strike.

Actual and forecast prices are indicated in the attached chart. Current prices for most nonferrous metals are

believed by Asarco to be in line with supply and demand fundamentals for these markets.

Asarco also recently announced Board of Directors authorization for the repurchase of up to 500,000 shares of its common stock. If the entire authorized amount were repurchased, Bendix' ownership percentage would increase from approximately 20.7 to 21 percent and equity in Asarco earnings would be modestly improved (about $.01 per share for fiscal 1980).

Attachments (Attachments omitted in printing)

Excerpts from the Records of the Meeting of the Board of Directors of The Bendix Corporation held on June 26, 1980

[p. 19]

STATUS OF INVESTMENT IN ASARCO

Mr. Agee noted that a memorandum entitled "Status of Investment in ASARCO" had been sent to each director prior to the meeting. A copy of the memorandum, initialed by the Secretary, is filed with the records of the meeting.

Internal Memorandum	Bendix Executive Offices Southfield, Michigan

Date	June 26, 1980	Letter No.
To	Board of Directors	
From	W. M. Agee	
Subject	Status of Investment in Asarco	

The current 1980 outlook for Bendix' equity in earnings of Asarco, based on actual results through Asarco's first (our third) quarter and Asarco forecasts for the rest of the year is reflected in the attached table. The expected Asarco contribution to Bendix' fiscal 1980 earnings per share of \$2.50 is a \$1.39 increase over the contribution to Bendix' 1979 earnings. It is, however, a \$.05 decrease from the previous estimate given to the Board, reflecting some softness in demand for copper and lead as a result of economic conditions in the domestic automotive and housing industries.

Not reflected in the current outlook are the estimated effects of several accounting and other matters currently being finalized by Asarco which could further reduce the expected Asarco contribution to Bendix' EPS by about 13 cents. Based on a review of actual and forecast metals prices for Asarco's second (our fourth) quarter (reflected in the attached chart), we do not anticipate any further significant variance from the current 1980 outlook. The recent increase in silver prices to the \$15-\$18 per ounce

range should offset much of the softening in other metals prices (particularly lead).

Attachment (Attachment omitted in printing)

Excerpts from the Records of the Meeting of the Board of Directors of The Bendix Corporation held on August 28, 1980

[p.4]

W. M. Agee reported on the outlook for Asarco Incorporated. He referred to a communication dated August 28, 1980 entitled "Status of Investment in Asarco", a copy of which had been sent to each director prior to the meeting. A copy of the communication, initialed by the Secretary, is filed with the records of the meeting.

Internal
Memorandum

Bendix
Executive Offices
Southfield, Michigan

Date August 28, 1980

Letter No.

To Board of Directors

From W. M. Agee

Subject Status of Investment in Asarco

The current 1980 outlook for Bendix' equity in Asarco earnings reflected in the attached is based on twelve month results through June 30, 1980. The expected contribution to fiscal 1980 earnings per share of $2.22 is a $1.11 increase over the contribution to fiscal 1979 earnings per share. As we had anticipated at the time of our last status report, this increase is approximately $.12 per share less than the previous formal estimate to the Board, because of required adjustments to provisional sales recognized in earlier periods at the higher prices then prevailing and other operating factors.

Also attached is a chart of forecasted and actual (through July 31) metals prices for Asarco. Because of the strike within the copper industry, current metals prices are not a reliable indicator of the level or trend of future Asarco earnings. Although the strike will have a substantial adverse affect on Asarco's domestic operating results, the impact on consolidated results should be softened somewhat by operations in other countries. The severity of the impact on Asarco earnings will in large measure be determined by the length of the strike, as well

as the timing and strength of the recovery in the housing and automotive industries from the current recession.

Attachment (Attachment omitted in printing)

EXHIBIT U TO THE STIPULATION OF FACTS

August 24, 1982

To: Board of Directors

From: W. M. Agee

Subject: Acquisition of GEORGIA

Management requests authority to pursue the acquisition of GEORGIA. Management believes the combination would benefit the shareholders of both companies and would constitute a strong, well-balanced company.

Proposal

We propose that Bendix make a cash offer to buy up to 50% of GEORGIA's common shares for $40 per share. It is contemplated that following the acquisition Bendix would propose the acquisition of the balance of GEORGIA's common stock through a merger or exchange offer, which we intend be tax free, in an exchange of Bendix common stock for GEORGIA shares. The tender offer will set forth an intended exchange ratio for this second step based upon the current relationship of the tender offer price and the market price ($50) of Bendix common stock (*e.g.*, .8 of a share of Bendix stock for each share of GEORGIA), and will explain that Bendix reserves the right to revise the ratio, the consideration or the terms generally as circumstances change.

Upon authorization, management would alert GEORGIA management to the Bendix offer and indicate our strong preference for a friendly transaction.

Background on GEORGIA

The following background is derived from publicly available information.

GEORGIA is a diversified producer with 1981 sales of $3.3 billion, serving the aerospace and primary materials (aluminum, cement, aggregates and chemical) markets. It was formed in 1961 by merger of predecessor companies. From 1968 through 1974, it acquired portions of Harvey Aluminum, now GEORGIA Aluminum, Inc.

The bulk of GEORGIA's sales and profits are in fast-growing, profitable aerospace businesses. In contrast to our Aerospace Group which is primarily a subcontractor, GEORGIA is primarily a prime contractor; GEORGIA is primarily engaged in missiles, we are primarily in aircraft. The balance of GEORGIA's businesses are in cyclical primary materials (aluminum, cement, aggregates and chemicals) which have recently been depressed because of the general state of the economy and high interest rates.

Aerospace—Most of GEORGIA's sales (58.4% in 1981) are aerospace related. The aerospace segment designs, develops and produces missile systems, space systems, launch vehicles, weapons systems, electronic and communications systems and aircraft components. Approximately 90% of this segment's sales are to the U.S. Government. Major contracts include the Pershing surface-to-surface missile system, the MX missile, the Titan III, the Space Shuttle's external fuel tanks, and the fire control system for the F-18 fighter. Most of these contracts are in the early stages of their life, with excellent prospects for growth and profitability. The aerospace segment produced an operating profit in 1981 of $136.5

million, and has continued to improve in the first half of 1982 at a record pace. Approximately 80% of aerospace revenues are derived from cost-reimbursement contracts.

Aluminum—The company's next largest segment (15.8% in 1981) is aluminum production. GEORGIA is an integrated producer, from bauxite mining, alumina production, aluminum reduction, through milling. It is further integrated in a limited way through extrusion and fabrication. This segment also produces titanium products and calcined petroleum coke, and it manages on a fee basis the operation of a Government ordnance plant. Because of the current depressed market for aluminum products and high interest costs resulting from extensive plant reburbishings, the aluminum segment is operating at a loss. The company's two reduction plants have recently been modernized, and an alumina plant in St. Croix is being expanded. The segment is about one-fifth to one-fourth the size of the major integrated producers such as Alcoa, Alcan, Reynolds and Kaiser. A return to acceptable levels of profitability could not be expected before a general economic recovery, but relatively little additional capital expenditure is required to prepare for the next upswing.

Chemicals—The chemical segment produces concrete admixtures, grouting compounds, floor hardeners, surfacing materials, organic dyes, and chemical magnesia. The company is the leading producer of sulfur dyes and is a major producer of textile dyestuff. The segment has continued profitability despite the current economic downturn.

Concrete and Aggregates—These two segments produce cement, stone, sand, and gravel primarily for the construction industry. Other specialty products include

lime, agricultural limestone, and chemical grade silica sand. These segments are multi-plant and regional in nature. While these segments were profitable in the second quarter of 1982, they remain at depressed levels because of low activity in the construction industry.

Other—The company also provides data processing services to private industry and to the U.S. Government. It also develops real estate and participates in various joint ventures, including a Suzozite Mica mine in Canada.

Financials—GEORGIA is a financially strong company. However, the continuing depressed economic climate and recent heavy capital expenditures have caused GEORGIA to increase its debt ratio from 13% at 12/31/80 to 30% at 6/30/82. The company's sales and earnings in the last several years are as follows:

GEORGIA Sales and Earnings
(In Millions of Dollars)

					1982	
	1978	1979	1980	1981	1st half	2nd Quarter
Sales	1,758	2,061	2,619	3,294	1,732	910
Earnings (net)	136	178	188	200	56	40

Shareholders—GEORGIA has approximately 35.6 million shares outstanding. About 1.6% of shares are owned by corporate insiders, about 7.2% by investment companies, and approximately 43.0% are owned by major institutional holders. About 4.5% is owned as an

investment by Bendix, under a portfolio investment program previously authorized by the Board. (This investment position has not been disclosed publicly by Bendix). The remaining 43.7% are held by the general public or other non-reporting entities.

The Combination

The combined company would be a stable, financially strong, diversified manufacturing company, predominantly engaged in aerospace/electronics activities. Approximately four-fifths of aerospace sales would be directed toward the military, and one-fifth would be to commercial and general aviation customers. About one-fourth of the combined company's sales would be to the automotive market, about one-tenth to the industrial machinery market, and approximately one-seventh in primary materials production (aluminum, cement, aggregates, and chemicals).

TABLE
Combined Sales
(Bendix and GEORGIA 1981 fiscal years)
(in millions)

Sales by Segment	Amount	% of Total
Aerospace/Electronics	$3,392.6	43.9%
Aluminum Processing	522.2	6.8
Automotive	2,176.5	28.2
Cement and Aggregates	371.6	4.8
Chemicals	276.5	3.6
Industrial	784.9	10.2
Other Operations and Intercompany Eliminations	195.2	2.5
Total	$7,719.5	100.0%

We believe that the management approaches Bendix now employs are well suited to GEORGIA's businesses. We are confident that Bendix' commitment to technological advancement, quality products and services, a stimulating work environment, and high returns are compatible with GEORGIA management and employees. In addition, our commitment to the aerospace industry would be deepened, strengthening our reputation as a reliable supplier to this nation's defense and that of its allies. Bendix' exposure to the automotive market would be reduced, while our participation in reindustrialization and the rebuilding of the country's infrastructure would be enhanced.

The combined company would be stronger financially, with about double Bendix' current profits and assets. It would have a richer technological content and a newer asset base. The disciplines in our design and manufacturing activities are complementary overall and very similar in the aerospace/electronics areas.

The acquisition could expose Bendix to greater operating risks, although these are considered to be manageable. One risk is that the aluminum industry could remain depressed for several more years, thereby lagging in repayment of the substantial recent investments that have been made in modernized plants. Another is that interest rates could rise to new heights, further dampening demand and putting pressure on interest coverage ratios. We believe the combined financial strength of the merged entity could withstand these risks better than most major U.S. corporations.

Shareholder Effects

Bendix' shareholders would benefit from the combination as participants in a larger, more profitable, and more diversified company with predominant sales in aerospace and higher technology activities. We do not anticipate any appreciable dilution in earnings per share would result for either company.

GEORGIA's shareholders would fare very well. For those who received cash, there would be a substantial premium over recent market prices. The share price of GEORGIA stock has been as low as $22.25 in recent weeks, and it closed at $30-5/8 yesterday, August 23. The $40 offer represents approximately $11.50 per share on an average more than GEORGIA paid to repurchase some 700,000 of its own shares earlier this year. Those who received Bendix stock, assuming an .8 to 1 exchange ratio based upon the tender offer price and Bendix' recent market price, would realize substantial increase on earnings per share, and a 39% higher dividend. GEORGIA shareholders would be well represented in the new combined company, owning in excess of 40% of the common stock.

The Approach

We would intend to propose to GEORGIA management that they accept the Bendix offer on a friendly basis. Nevertheless, the GEORGIA board and management may well resist our offer. Our investment banking advisor, Salomon Brothers, believes there is a good chance such an offer will succeed on purely economic grounds and has advised us that the terms of our offer are fair to Bendix.

If a second request for information is received, clearance of our Hart-Scott antitrust filing could take approximately one month. Jerry Shapiro of Hughes Hubbard & Reed will be at the meeting to discuss his firm's antitrust conclusions with you.

Once the transaction is complete, we will have a higher proportion of short- and medium-term debt. We continue to plan to prepare new long-term debt financing when attractive rates are available. However, immediate financing of this kind is not necessary to the success of this transaction.

The transaction would be funded with some of our existing cash and investments, revolving credit agreements and new lines of credit. These sources are sufficient without liquidating our investment position in RCA. Our resulting debt ratio would be within our existing loan covenants, and we believe would allow us to retain our existing credit agency ratings.

Request for Authority

Management requests authority to make an offer as outlined above for the common shares of GEORGIA at the timing within the next ninety days as it deems appropriate, and to take all appropriate actions including effecting additional borrowings and regulatory filings required to complete this acquisition.

SUMMARY

	EARNINGS				DEBT RATIO			INTEREST COVERAGE		
	1982	1983	1984	1985	1983	1984	1985	1983	1984	1985
STAND ALONE										
EARTH	5.87	6.11	8.70	11.05	26.8	26.3	24.6	3.43	4.32	4.98
GEORGIA	3.38	4.25	5.99	7.51	29.7	–	–	3.94	–	–
VALUATIONS										
Base: $40/share; 50% Cash		6.14	9.22	12.19	38.5	37.7	34.1	2.51		
• Increase Income $25MM/yr		6.82	9.93	12.94	38.3	37.1	33.1	2.77		
• Reduce Cash to 45%		6.08	9.05	11.92	36.6	35.8	32.2	2.66	3.46	4.40
• Change Interest to 141/2%		6.24	9.34	12.30	38.5	37.6	34.0	2.59		
• $5.00 Drop in Earth Price		5.89	8.84	11.69	38.6	37.8	34.2	2.51		
Increase Price to $45.00										
50% Cash		5.38	8.33	11.16	39.1	38.4	35.0	2.31		
• Increase Income $25MM/yr		6.03	9.01	11.88	38.8	37.8	34.0	2.57		
• Reduce Cash to 45%		5.35	8.18	10.91	37.0	36.3	33.0	2.45	3.23	4.12
• Change Interest to 141/2%		5.50	8.46	11.29	39.0	38.3	34.9	2.39		
• $5.00 Drop in Earth Price		5.15	7.96	10.67	39.1	38.4	35.1	2.31		

TAX COURT OF NEW JERSEY

Docket No. 14-24-0504-84-CB
CIVIL ACTION

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BENDIX CORPORATION,
Plaintiff,

v.

DIRECTOR, DIVISION OF
TAXATION,
Defendant.

Order Admitting
Report of
Defendant's
Expert

This matter having been opened to the Court by Riker, Danzig, Scherer, Hyland & Perretti, attorneys for plaintiff, on plaintiff's motion to exclude the report of defendant's expert, and the defendant having filed an opposing brief, the Court having reviewed the briefs, expert's report and accompanying documents, having heard argument, and for good cause shown,

IT IS on this 7th day of December, 1987,

ORDERED that plaintiff's motion is denied and the report of defendant's expert, Professor Harbir Singh, is hereby admitted as part of the record in this case.

/s/ Lawrence L. Lasser
Lawrence L. Lasser, P.J.T.C.

PAPERS CONSIDERED:

_____Notice of Motion

_____Movant's Affidavits

_____Movant's Brief

_____Answering Affidavits

_____Answering Brief

_____Cross-Motion

_____Other_____